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**2 UNITED STATES BANKRUPTCY COURT**

**3 SOUTHERN DISTRICT OF NEW YORK**

4 Case No. 05-44481

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**6 | In the Matter of:**

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8 DELPHI CORPORATION

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10 Debtor.

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14 U.S. Bankruptcy Court

15 One Bowling Green

## 16 | New York, New York

17

18 | January 12, 2007

19 | 1:45 p.m.

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21 | B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25

1 MOTION for Order Under 11 U.S.C. Sections 105 and 363  
2 Authorizing the Debtors to Implement a Key Employee  
3 Compensation Program

4

5 MOTION for an Order Authorizing The Official Committee of  
6 Unsecured Creditors to Prosecute the Debtors' Claims and  
7 Defenses Against General Motors Corporation and Certain Former  
8 Officers of the Debtors

9

10 EX PARTE MOTION for Order Authorizing the Official Committee of  
11 Equity Security Holders to File Under Seal a Supplemental  
12 Objection in Further Support of the Equity Committee's  
13 Objection to the Motion for an Order Authorizing the Official  
14 Committee of Unsecured Creditors to Prosecute the Debtors'  
15 Claims and Defenses Against General Motors Corporation and  
16 Certain Former Officers of the Debtors

17

18 MOTION of Kyocera Industrial Ceramics Corporation for Relief  
19 From the Automatic Stay to Permit it to Exercise Setoff and/or  
20 Recoupment Rights

21

22 CADENCE Innovation LLC's Application Pursuant to 11 U.S.C.  
23 Section 503 for Allowance and Payment of an Administrative  
24 Expense Claim

25

1 CADENCE Innovation LLC's Motion for Relief From the Automatic  
2 Stay to Proceed With its Proceed With its Patent Litigation  
3 Against the Debtors

4

5 DEBTORS' Fourth Omnibus Objection (Procedural) Pursuant to 11  
6 U.S.C. Section 502(b) and Fed. R. Bankr. P. 3007 to Certain  
7 Duplicate and Amended Claims

8

9 DEBTORS' Fifth Omnibus Objection (Substantive) Pursuant to 11  
10 U.S.C. Section 502(b) and Fed. R. Bankr. P. 3007 to Certain (A)  
11 Claims With Insufficient Documentation and (B) Claims Not  
12 Reflected on Debtors' Books and Records

13

14 MOTION for an Order Under 11 U.S.C. Section 1121(d) Extending  
15 Debtors' Exclusive Periods Within Which to File and Solicit  
16 Acceptances of Reorganization Plan

17

18 DELPHI Corporation's Complaint to Recover Property of the  
19 Estate Against NYCH LLC dba RCA Computer Experience

20

21 DEBTORS' Second Omnibus Objection (Procedural) Pursuant 11  
22 U.S.C. Section 502(b) and Fed. R. Bankr. P. 3007 to Certain (I)  
23 Equity Claims, (II) Claims Duplicative of Consolidated Trustee  
24 or Agent Claims, and (III) Duplicate and Amended Claims

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1 SUFFICIENCY Hearing Regarding Claims of LaFonza E. Washington

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3 SUFFICIENCY Hearing Regarding Claims of Michael Sieloff

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5 SUFFICIENCY Hearing Regarding Claims of Ronald Jorgenson

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7 SUFFICIENCY Hearing Regarding Claims of Terry R. Mocny

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9 SUFFICIENCY Hearing Regarding Claims of William Kerscher

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11 SUFFICIENCY Hearing Regarding Claims of Douglas Deykes

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13 SUFFICIENCY Hearing Regarding Claims of William P. Downey

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15 SUFFICIENCY Hearing Regarding Claims of Wilfred D. Leong

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17 SUFFICIENCY Hearing Regarding Claims of Victory B. Perez

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24 Transcribed By: Esther Accardi

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PROCEEDINGS

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THE COURT: Please be seated. Okay. Delphi Corporation. And this is now on the omnibus day matters.

4

MR. BUTLER: Your Honor, good afternoon. Jack Butler, Kayalyn Marafioti and John Lyons from Skadden Arps Slate Meagher & Flom, LLP on behalf of the debtors for our January omnibus hearing. Your Honor, we have filed and circulated the fourteenth omnibus hearing agenda, that agenda has eleven matters on it. We propose to proceed in the order of the agenda.

11

THE COURT: Okay.

12

MR. BUTLER: Your Honor, the first matter on the agenda is -- I do want to comment on these, is the KECP annual incentive program motion, this is found at docket number 213. And the reason this found its way on the motion for this particular hearing was in Your Honor approving the supplement for the second half 2006 KECP there was a question as to whether future period KECPs needed AIPs needed to be approved. Your Honor concluded that you wanted to take a look at the first half 2007 AIP, our stakeholders had a chance to look at that in the context of the facts and circumstances at the time. So we've now arrived at that point and because we're ready to review, we're in the process of reviewing our 2007 business plan with our stakeholders and committees over the next week or two, we concluded it would be appropriate to put this matter

1 off to the February 15th omnibus hearing.

9

2 THE COURT: Okay.

3 MR. BUTLER: Because the targets will be derived from  
4 that plan and we wanted the committees to have a chance to look  
5 at it first.

6 THE COURT: Okay. But it's just the AIP portion of  
7 it?

8 MR. BUTLER: Just the AIP portion of it, just the  
9 first half that's coming before the Court.

10 THE COURT: Okay. That's fine.

11 MR. BUTLER: All right. So that moves to February  
12 15th. With respect to item number 2, this is the KECP  
13 emergence incentive program. This comes from docket number  
14 213, way from the beginning of the case. I can, at this  
15 point -- Your Honor, with permission I'd like to simply take  
16 this off calendar. Assuming we move forward on the framework  
17 that Your Honor approved this morning, one of the elements of  
18 that framework is the executive compensation program reasonably  
19 acceptable to the plan investors that is based on market based  
20 program. And that was to be included in the disclosure  
21 statement and plan.

22 THE COURT: Right.

23 MR. BUTLER: So as a result, assuming if we move  
24 forward with the framework, this motion would not be prosecuted  
25 independently of the plan.

1 THE COURT: Okay. That's fine. I encourage that.

2 MR. BUTLER: So, Your Honor, we would simply then  
3 take this off calendar pending framework.

4 THE COURT: Okay.

5 MR. BUTLER: Matter number 3 on the agenda, Your  
6 Honor, is the creditors' committee's GM claims and defenses  
7 motion, filed at docket number 4718. I haven't really had a  
8 chance to consult with the committee about this other than  
9 right now we agreed to move it to the February 15th omnibus  
10 hearing. I suspect by that time we'll come back and ask for  
11 this to follow the same time schedule as the framework.

12 THE COURT: Well, you should assume I'm not going to  
13 do a lot of preparation on that unless you let me know fairly  
14 soon about it.

15 MR. BUTLER: I think the understanding is that this  
16 is going to follow the way of the 365, 1113, 1114, but we  
17 haven't worked out the arrangements with the committee.

18 THE COURT: Okay. That's fine.

19 MR. BUTLER: So we'll move that to the 15th. That  
20 similarly, Your Honor, motion number 4, that's the equity  
21 committee's ex parte motion, we'll follow that same track to  
22 February 15th.

23 THE COURT: Okay.

24 MR. BUTLER: Mr. Berger, matter number 5 is yours.

25 MR. BERGER: Good morning, Judge.

1 THE COURT: Good morning, or afternoon.

2 MR. BERGER: Good afternoon. Neal Berger, Togut  
3 Segal & Segal, conflicts counsel. Number 5 on the agenda this  
4 morning is the motion by Kyocera Industrial Ceramics  
5 Corporation from relief of the automatic stay to affect a  
6 setoff. We received that motion just before the holidays.  
7 Kyocera seeks to set off what it believes was a double payment  
8 made in April of 2004 against open invoices as of the petition  
9 date. Because the payment was made sufficiently before the  
10 filing date we don't have the Furakawa issue that Your Honor  
11 heard about earlier in the case. Delphi is looking at it (a)  
12 to confirm that the payment was made and (b) if it was made  
13 whether or not it was applied to open invoices at the time.  
14 This one shouldn't require heavy lifting. I spoke to counsel  
15 for Kyocera, we've agreed to put it out to February and hope is  
16 that we'll submit a stipulation before then.

17 THE COURT: Okay. That's fine. Thank you.

18 MR. BUTLER: Your Honor, matters numbers 6 and 7 will  
19 be taken together. The first is a Cadence administrative  
20 expense claim application at docket number 5774, which I  
21 understand counsel wants to proceed with only if it prevails on  
22 its motion for relief from the automatic stay and 5777, item  
23 number 7. So we'll cede according to counsel for that purpose.

24 MR. CONNOLLY: Thank you, counsel. Good afternoon,  
25 Judge Drain.

1 THE COURT: Good afternoon.

2 MR. CONNOLLY: Your Honor, for the record, Dennis  
3 Connolly here on behalf of Cadence Innovation, LLC. Your  
4 Honor, there are two motions on from Cadence this afternoon  
5 that were filed, I think, in tandem, and I think logically fit  
6 together. That is the motion to lift the automatic stay to  
7 allow the litigation in Detroit, Michigan to proceed. And a  
8 correlate motion to allow an administrative expense claim that  
9 really is recognizing the conjoined nature of the patent  
10 violation that we allege in the complaint. And that is in the  
11 process of being litigated in Detroit, to the extent that there  
12 are post-petition infringements and damages that are determined  
13 by the finder of fact in Detroit with respect to patent  
14 violations and damages that are ultimately asserted to the  
15 extent that those damages relate to a post-petition, pre-  
16 confirmation period. We would want that to be recognized as an  
17 administrative expense claim. And I'll talk about some of the  
18 case law thereunder, Your Honor. But I don't think there's any  
19 real dispute that a post-petition tort under Reading v. Brown,  
20 and there's a fair amount of case law under patent laws. And  
21 construing patent laws would be, in fact, an administrative  
22 expense priority.

23 Your Honor, turning to the broad outlines of the  
24 motion and the request that Cadence is bringing on today, I  
25 think there are four points I want to note at the outset that

1 distinguish this request, and these requests, from what I'll  
2 call more run-of-the-mill breach of contract claims.  
3 Obviously, we have looked at the papers in connection with the  
4 prior motions for relief, from stays filed by other creditors;  
5 we've read the transcripts. I looked with particular interest  
6 and the Nutech litigation over the summer and out into the  
7 fall. And I think there are some points I would like to  
8 articulate at the outset that I think are important and of  
9 consequence here that really drive a different result from this  
10 is just an unliquid pre-petition claim and therefore get in the  
11 claims resolution process. And, Your Honor, it really revolves  
12 around the specialized nature of the patent claim at issue.  
13 First, Your Honor, as I noted in my presentation as to the  
14 overall relief being sought today, the patent violation as the  
15 case is recognized, I think, without dispute gives right to a  
16 patent violation, a claim for damage each and every day of  
17 production, in essence. The Hazelquist case, out of the  
18 federal circuit which is a 2006 case, recognizes that, for  
19 example, every day of production is a new claim. Obviously,  
20 you're not going to litigate that in that context, Your Honor.  
21 But it was recognizing the independence of that claim. And the  
22 way that claim arises in the context of discharge of the  
23 debtor. The debtor took the position well; the patent  
24 violation occurred before I got my discharge, therefore you  
25 have no claim for what were violations post-discharge. And the

1 answer, obviously, according to the federal circuit is no,  
2 that's wrong, this is a new claim. Now, to the extent that  
3 they didn't file a proof of claim, the creditor, patent holder  
4 did not file a proof of claim beforehand, etcetera, then they  
5 may have lost those rights by virtue of a discharge. However,  
6 that does not mean that those rights do not exist going  
7 forward. And that's why, I think, in tandem, Cadence is  
8 seeking is the ability to adjudicate the claim in the place  
9 where it is -- go right in the middle, in essence, Your Honor.  
10 And I'll talk about that more in a moment, before the court in  
11 Detroit. And that will address if the stay is lifted both the  
12 damages that arise by virtue of the infringing conduct that may  
13 be between January 1, 1999, which is the sort of start date  
14 under Judge Cohn's order and really continuing through the date  
15 or when a license agreement is negotiated between the parties  
16 or they change the way they do business such that they're no  
17 longer infringing.

18 THE COURT: Well, that was a question I had which is  
19 whether the damages portion of this litigation will include if  
20 the stay is lifted. I mean, is it covered by the litigation,  
21 ongoing damages?

22 MR. CONNOLLY: Well, Your Honor, it certainly would  
23 go through the date of the trial as typically it has gone. And  
24 we got so that in the date of the trial will depend, obviously,  
25 on whether the Court lifts it.

1                   THE COURT: And that was clear from how the  
2 magistrate judge and the district judge set it up as far as the  
3 two phase--

4                   MR. CONNOLLY: It's a bifurcated. Right now, we're  
5 focusing on liability, Your Honor, and what the March pretrial  
6 hearing and the March pretrial order were to do were to set up  
7 the liability issues subsequent to the Markman Order. Patent  
8 litigation may be even more arcane and onerous than may other  
9 litigations.

10                  THE COURT: Right. But as far as the damages portion  
11 of the two-phase trial, did that contemplate damages through  
12 the date of trial or through a specific date that it includes  
13 the post-petition period?

14                  MR. CONNOLLY: Well, I don't think it was addressed  
15 by the parties because the last -- obviously, the consequence  
16 of the automatic stay were not at all involved.

17                  THE COURT: I know. But I guess conceivably it  
18 could be damages up to the date that the complaint was filed as  
19 opposed to damages post-complaint.

20                  MR. CONNOLLY: Cadence would be prepared to show  
21 continuing violation to this day of its patents. And therefore  
22 the damages would continue post the assertion of the claim.  
23 Because there is a dispute and certainly that's where the  
24 liability issue, Your Honor, is. There is a dispute on the  
25 part of Delphi and this is not atypical to challenge the

1 validity of the patents and that's -- I don't know if the Court  
2 recalls in Paragon Trade Brands. But we had claim and  
3 counterclaim in terms of validity of the patent, the  
4 construction of the patent and how the patents interact with  
5 other patents in terms of what the liability might be and  
6 accordingly what the damages might be and how one calculates  
7 those damages.

8 THE COURT: Right.

9 MR. CONNOLLY: So, Your Honor, we would -- I think  
10 the trial would proceed first in liability and then damages to  
11 the date of the trial and/or to the date that it was  
12 demonstrated the product no longer infringes. Because were  
13 Delphi, for example, to change its art, change the way it  
14 manufactures, these are air bag covers on steering wheels, and  
15 be able to demonstrate that to a finer effect. Obviously, that  
16 would be a cutoff date. I do not believe that that is the case  
17 today and therefore the damages would comprehend both a pre-  
18 petition period and a post-petition period. And that's why we  
19 filed the motions together to try and address this issue.

20 The other, I think, aspect that distinguishes this  
21 case from the run-of-the-mill stay case and run-of-the-mill  
22 issue of an unliquidated claim, Your Honor, is the fact of a  
23 specialized tribunal. That's one of the Sonax factors that  
24 I'll talk about in a minute and I'll talk in any degree of  
25 depth or not, as the Court deems appropriate. Because I know

1 you've been through a number of the hearings and Sonax is,  
2 obviously, the primary and leading case on the issue. But the  
3 specialized tribunal aspect in terms of the unique feature here  
4 really is twofold, Your Honor. One is the district courts are  
5 permitted with jurisdiction to deal with patent issues. And,  
6 obviously, there are some cases that would support the  
7 proposition that the mandatory withdrawal of the reference  
8 would be appropriate in the circumstance. And we cite that the  
9 Singer case and some other cases are meritorious. But the  
10 other issue is really more particularized even still. And it  
11 is this, Your Honor. Judge Cohen has lived with this case.  
12 You've read, I think, at least maybe you have not, maybe you  
13 have. I don't know how much time you have given what you've  
14 had the past few days.

15 THE COURT: No. The magistrate made a ruling that  
16 Judge Cohen went through it and adopted it after a hearing.

17 MR. CONNOLLY: Very detailed Markman Order that the  
18 debtors attached to their pleading which acknowledged a number  
19 of the claims being construed in the manner in which Cadence  
20 said that they should be construed. Acknowledged that some of  
21 the claims, and these are very obviously complicated issues in  
22 how one reads the patents, how does that interact with the  
23 other portions to the patents. But obviously, Judge Cohen is,  
24 I think, unique in his understanding of the parties'  
25 contentions with respect to these particular patents and their

1 operation. So not only do you have someone in whom  
2 jurisdiction has been vested by statute, and the patent appeal  
3 would go to the federal circuit which is a specialized tribunal  
4 in that sense. But you also have someone who has unique  
5 knowledge about the patent laws generally as they apply to  
6 these patents. And then the sort of factual issues as to the  
7 claim construction and how these things work, essentially. And  
8 what does it mean to have a breakable seam in the middle of the  
9 air bag covers if the air bag comes out in a particular way,  
10 for example. So that that is something I think is quite  
11 distinct from what I'll call your more run-of-the-mill stay of  
12 litigation request that might have been heard by the Court.

13 The third item really is also an aspect of the patent  
14 laws as well, Your Honor. And that is, as you know, the patent  
15 is a limited exclusive license, in essence, granted by the  
16 government to an inventor to exploit and exclude others from  
17 exploiting the particular technology, particular art,  
18 particular idea at issue and embodied in the past. Typically,  
19 those are twenty years, there are some nuances one way or the  
20 other. But as we outlined in our responsive memorandum, we  
21 have assets that as to patents that will expire over the course  
22 of the next few years. So we have in contrast, perhaps to a --  
23 your contract claim is fixed in stone as the petition date and  
24 is X, and when we get around to liquidating X it will receive  
25 whatever distribution it receives. We have, I think, a

1 distinguishing characteristic here, Your Honor, in that the  
2 asset at issue will no longer exist after a period of time. I  
3 want to talk about a couple of aspects of that in just a  
4 moment, Your Honor, in terms of the timing issues in this case  
5 and timing issues generally.

6 And finally, Your Honor, and this was an issue that I  
7 found interesting in the context of prior stay relief  
8 litigation before this Court. And this was over the summer and  
9 into the fall. And this is not the effect of too early too  
10 late issue as much as it is the issue -- and this is something  
11 the committee was raising, that while we don't want to have  
12 stay relief because it will have an impact on the proposed  
13 claims allowance procedures. And I was going to say claims  
14 estimation procedures as well, but obviously the Court has  
15 significantly limited that aspect of relief sought by the  
16 debtors by a motion in November. And what we now have is a  
17 procedure that is binding on all unsecured creditors, save for  
18 nineteen, by our count. And that has a couple of consequences  
19 here that I'd like to note. One is that as to those others we  
20 have exceeded there -- with some thought or without much  
21 thought to that process. They are now going to go through the  
22 relatively fast track and relatively compressed adjudication  
23 ABR procedure, mediation procedure, contemplated in the  
24 procedures approved by the Court. Those of us who are not  
25 subject to that are not subject to those general procedural

20

1 guidelines and I don't think there's an impact or any risk to  
2 the timing and execution on the part of the debtor of its claim  
3 adjudication procedures as presently approved by the Court.  
4 That is to say, I don't think it's realistic to argue that  
5 somehow floodgates will be open and indeed, there are only  
6 thirty some stay relief motions filed in the case to date in  
7 the fifteen to sixteen months. And I'm not aware of any  
8 significant stay relief motions filed after ours, Your Honor.  
9 So I don't think that there is a risk to what were obviously  
10 very thought out claims objection procedures. There was some  
11 give-and-take with creditors, the Court has some concerns about  
12 those issues as well. And ultimately what came out of that  
13 process is what, obviously, is proceeding to date. And indeed,  
14 the debtor filed earlier today, I saw a sixth omnibus objection  
15 pursuant to the same claim objection procedures.

16 THE COURT: The debtor may still need to estimate  
17 this claim for reserve or other purposes, and you're not  
18 seeking any relief in respect to that at this point. They're  
19 not either. But I'm assuming that that litigation may go on  
20 for a lot longer than the time for distributions in the case.  
21 So conceivably the debtors might need to move for estimation at  
22 some point.

23 MR. CONNOLLY: Your Honor, that's exactly right. And  
24 I guess I had a sort of a point that I should have made. We  
25 filed this motion and I sort of followed up after, you know,

1 obviously global issues here in the case. And I'm almost  
2 embarrassed to show up with a stay motion on a twenty million  
3 dollar, give or take, claim. But we filed it in the context of  
4 us raising the issue with the debtor's counsel back in October,  
5 well before I was aware -- Cadence was aware of the ongoing  
6 discussions that mature into the plan framework and the other  
7 agreements that the Court approved just this morning. That  
8 being said, Your Honor, I don't disagree with the proposition  
9 that the patent litigation, were the stay to be lifted today,  
10 may well take past confirmation if Mr. Butler's time line is  
11 followed. And I guess as an unsecured creditor, I think  
12 Cadence will be quite happy to see that process unfold because  
13 we're talking about full distribution in respect of unsecured  
14 claims, and that's obviously a good thing. And relatively  
15 atypical in the context of Chapter 11 cases, at least in my  
16 experience. The estimation issue is an issue that I think  
17 would have to be addressed at the appropriate time in the  
18 appropriate context for the purpose of reserve and for the  
19 purpose of voting, perhaps, as well. Although, given -- you  
20 know, 1124 with the deletion of 11243 would probably all also  
21 get the right to vote even if we're "getting paid in full."  
22 That's an issue that the Court may or may not have to address  
23 at the appropriate time, those cases on that issue. That being  
24 said, I would expect that we will have a conversation about it.  
25 I am not attempting by this motion to preclude that issue from

1 being addressed. I did object vociferously, Your Honor, to the  
2 claims estimation procedures proposed by the debtors initially,  
3 because I think it's the debtor's knowledge by carving this out  
4 of that regime, and obviously that regime really didn't go  
5 forward in any event. The complexity in the nature of this  
6 claim, even though it's -- you know, given the numbers we were  
7 tossing around earlier today, Your Honor, may not be huge.  
8 It's a substantial claim, in any event, still would require  
9 something other than what had been proposed under these  
10 procedures which might well be fine for your, again, run-of-  
11 the-mill trade claim. So, Your Honor, I think -- one last  
12 point and sort of the overarching points and then -- really  
13 correlative to that, Your Honor, is the carve-out to the claims  
14 estimation or claims objection procedures as a couple of  
15 different aspects. One is that stay relief, because we've been  
16 carved out and the -- we would be in the position, if the stay  
17 is lifted, to proceed before Judge Cohen, I think that promotes  
18 judicial efficiency to a large degree. Because as the Court  
19 can see from the papers, I don't think there's any dispute on  
20 this. Judge Cohen has spent years in the vineyards with these  
21 patent claims dealing with these litigants and understanding  
22 the nature of the plan. And to start afresh with a district  
23 judge, for example, in the Southern District of New York, while  
24 jurisdiction is possible and jurisdictionally potentially  
25 appropriate, there may be a transfer venue issue that might

1 also be implicated in that context, Your Honor, that to me -- I  
2 think if you look at the Campbell case, which we've cited in  
3 our papers, at 776 F.2d 802, page 807, it's a 9th Circuit  
4 (1985) case. As Campbell recognizes that judicial economy  
5 dynamic, standing alone might be the sustainable cause to lift  
6 the automatic stay.

7 Other issues, Judge, in terms of carve-out of the  
8 Cadence claims from the omnibus procedures which the debtors  
9 are now seeking approval of is this. There are two omnibus  
10 objections presently pending in respect to the Cadence claims.  
11 One of them, I talked to your clerk earlier today and will be  
12 heard a little bit later today. And that deals with the so-  
13 called duplicative issue. Our position was they weren't  
14 duplicative at all. But I think we're moving towards  
15 resolution of that point with Mr. Lyons, and we'll be prepared  
16 to --

17 THE COURT: Well, in any event, those debtors are not  
18 defendants in your lawsuit.

19 MR. CONNOLLY: That is true, Your Honor. The second  
20 issue is the -- what I'll call more substantive issue of the  
21 books and records objections which is in respect of Delphi  
22 Automotive Corp. and Delphi Automotive Systems, LLC. And as to  
23 those entities, these debtors have entered what is, in essence,  
24 a general demurrer; I don't think there's anything more than  
25 that. That is not on for hearing today, it's not on your

1 agenda today. It is not subject to the claims procedures. But  
2 because it's there and because time is passing, I think Cadence  
3 will be of the view that we have to move to withdraw the  
4 reference on that in order to avoid the argument that we  
5 thought somehow waited too long to see to withdraw the  
6 reference under the mandatory withdrawal provisions of Section  
7 157. In that event, Your Honor, we now have ancillary  
8 litigation before the district court here in New York seeking  
9 withdrawal of the reference of that outstanding claim objection  
10 so as to avoid getting into the situation where I can't later  
11 raise that issue should the Court decide not to lift the stay,  
12 and we should have proceeded in the context of some claim  
13 objection here before the bankruptcy court.

14 THE COURT: But as a practical matter, if I were to  
15 lift the stay, your lawsuit's only against --

16 MR. CONNOLLY: Delphi Automotive Corp.

17 THE COURT: Delphi Automotive, so -- now there may be  
18 some findings that's part of that pertaining to other debtors  
19 but you're still going to have -- I mean, it's unlikely to me  
20 that a patent claim will be as heard a little against Delphi  
21 Receivables, LLC, I mean it's just --

22 MR. CONNOLLY: Judge, I would agree with that, and  
23 the addressing of the second omnibus objection, I think, will  
24 deal with that issue where we will expunge the claims against  
25 the debtors other than Delphi Automotive Corp. and its

1 subsidiary, Delphi Automotive Systems, LLC. If the Court would  
2 lift the stay clearly based on the evidence we now have after  
3 colloquy with counsel seek to add, essentially, a party or  
4 address that issue in Judge Cohen's court so that we have that  
5 issue addressed as a part of that process so that the  
6 adjudication in the Detroit court could, in fact, deal with one  
7 of the factors now in Sonax which is complete resolution of the  
8 issues in the parties. Because we'd have a determination of  
9 damage -- excuse me, Judge, liability and then damages. And  
10 obviously we recognize, Your Honor, that the claim will be  
11 accorded no greater priority than a general unsecured claim  
12 against the debtors. At this point, obviously, that's in a  
13 pretty favorable position assuming the plan discussions go  
14 where people hope that they go. But I think relief from stay  
15 at this juncture in respect of the debtors, in light of where  
16 we're going to end up at the second omnibus objection, I think  
17 resolves that particular concern and would allow the litigation  
18 to proceed; deal with the two debtors who reputably have  
19 liability here, Delphi Automotive Corp., Delphi Automotive  
20 Systems, LLC, and will obviate any further interference,  
21 however minimal, that may be with the administration of the  
22 case in respect of the claims administration process.

23 THE COURT: Okay.

24 MR. CONNOLLY: And so, Your Honor, I think those are  
25 the distinguishing characteristics that I would submit to the

1 Court to really take us out of the run-of-the-mill type  
2 situation. Take us out of how one should generally approach  
3 it.

4 THE COURT: Okay.

5 MR. CONNOLLY: Your Honor, if I may, I have just a  
6 couple of more points I wanted to address to the Court.

7 THE COURT: Well if it's on the Sonax stuff, I read  
8 your papers on that.

9 MR. CONNOLLY: Okay. And that's why in my initial  
10 comments --

11 THE COURT: I mean, you pretty much covered the Sonax  
12 factors anyway, I believe. But while you're up turning to the  
13 second motion, it seems to me that's really seeking an advisory  
14 opinion at this point. You may well be right, but I don't have  
15 anything in front of me to say this is an administrative claim.  
16 You're basically asking me to just validate a principle of law  
17 that, you know, a post-petition tort claim is an administrative  
18 claim and that's -- that would be no different than citing a  
19 case.

20 MR. CONNOLLY: Your Honor, my point here would be --  
21 what I wanted to make sure is that to the extent the stay were  
22 lifted, I wanted to have the recognition that if there was an  
23 adjudication in favor of Cadence, if there was damages  
24 calculated and attributable to the post-petition period, that  
25 that, in fact, would be subject to treatment as an

1 administrative expense claim under the well established case  
2 law. If the Court's view is we'll deal with that if and when,  
3 then I guess we'll deal with it if and when.

4 THE COURT: That's my view, and hopefully people  
5 won't waste a lot of time on it. But there may be aspects of a  
6 decision, if there is a decision that will affect how I rule on  
7 it.

8 MR. CONNOLLY: One of the issues, though, Your Honor,  
9 is -- and this really comes back to the plan timing issue. And  
10 certainly as the plan process has now, to some extent,  
11 maturity, we now have people looking at it and negotiations  
12 moving towards a planned structure and the debtor's desire to  
13 finish up in a relatively rapid fashion. We will need to  
14 address in the context of reserves, again, it may be that the  
15 Court is of more of a mind to see this in that context under an  
16 estimation motion in that sense.

17 THE COURT: I am.

18 MR. CONNOLLY: That a reserve would have to be set  
19 for the calculable or reasonable damages that might be awarded  
20 ultimately so as to have that cash available. Because  
21 obviously, if it were to be adjudicated tomorrow we would have  
22 a right of payment, I think, under 1129 at plan confirmation,  
23 essentially the effective date. That was the reason for filing  
24 that companion motion to try and insure that we didn't get  
25 somehow whipsawed or we were not able to articulate that claim

1 at the appropriate time in light of claim confirmation timing.

2 THE COURT: Okay.

3 MR. CONNOLLY: Your Honor, just one other point, if I  
4 may. On the issue of timing. The debtors argue in their  
5 responsive papers that somehow there's been an admission that  
6 this is not such a big deal, we waited some time before we  
7 filed the motion to lift the automatic stay. And I wanted to  
8 at least articulate for the Court a couple of points there that  
9 we noted in response, and certainly we began these  
10 conversations before we filed the motion with the debtor once  
11 it commenced the claim process with the first omnibus  
12 objection. To say how do you want to handle, what is this  
13 unliquidated claim that has to be liquidated and has to be  
14 addressed with respect to pre and post-petition damages. And  
15 so it was not something that we just looked at and said we're  
16 not going to bother, but recognized given the way the Court was  
17 handling the earlier stay relief motions and just given the  
18 dynamics of the case, and at the time what I'll call  
19 significant litigation with GM and the unions on the 1113 and  
20 1114 issues, it struck us as more appropriate to file a motion  
21 when the claims process had been framed. And indeed, the  
22 debtor is now very much in the process of claims resolution,  
23 having filed now six omnibus objections, having resolved -- I  
24 don't have the exact number at my fingertips, Your Honor, but a  
25 number of claims, including claims in the first omni to which

1 Cadence had some objection or to which Cadence had filed and  
2 which addressed the Cadence claims. And certainly the second  
3 omnibus objection. So I don't think it would be a fair reading  
4 of the record to somehow infer that Cadence has been dilatory  
5 in seeking its relief before this Court. Or that somehow the  
6 fact that the case is taking four or five years in the non-  
7 bankruptcy forum somehow demonstrates Cadence's unwillingness  
8 or lack of enthusiasm for the claim. As outlined in the  
9 responsive brief, Your Honor, we very much are in the midst of  
10 litigation. The Court recognized the parties were very much  
11 fighting in a very vigorous way all the issues in that case.  
12 And as the Court knows, those patent litigation issues may, in  
13 fact, drag on based on the fact you've got to have the Markman  
14 adjudication first, and then you got to have a Markman hearing  
15 first, and then you move to liability and damages as a very  
16 typical structure. I don't know if the Court recalls in the  
17 Paragon situation we had initially the judgments and sort of a  
18 magnitude of liability, but we had to lift the automatic stay  
19 to allow the Court to actually adjudicate the damage based on  
20 the evidence, and enter a judgment for that amount so as to  
21 allow us to take appeals. So I don't think that the process  
22 procedurally that the case has taken outside the bankruptcy  
23 court is at all an indication or should be read fairly as any  
24 indication that Cadence is not vigorously prosecuting the  
25 claim. Nor do I think that the record in the process in the

1 bankruptcy case somehow leads to the conclusion that it's not a  
2 big deal. Don't worry about it, there's no prejudice to  
3 Cadence. As I've said, Your Honor, this is a continuing tort,  
4 if you will, and an asset that is subject to expiry over a  
5 period of time so that we would contend that the burden and the  
6 harm is much more on the Cadence end of this deal than on the  
7 debtors. And obviously the debtors have competent counsel in  
8 Quint Emmanuel available to litigate the case in Detroit.  
9 They've been retained by the Court, they've been retained to  
10 deal with this specific issue and they're prepared to proceed.  
11 Thank you, Judge.

1                   THE COURT: On the management side, who is dealing  
2 with this?

3                   MR. BUTLER: On management's side there's a patent  
4 section of the company that deals with -- that reports up to  
5 and includes Coburn, who is here as deputy general counsel, is  
6 very much involved in overseeing that. And is involved in  
7 looking at all those claims. But we clearly have patent  
8 lawyers within that organization. But this is all part of the  
9 claims process. You know, Cadence isn't the only patent claim  
10 that we have. And the biggest objection that the company has  
11 now, candidly, is that after waiting fourteen months to file  
12 the motion, and after deciding they wanted to opt out  
13 completely out of the claims administration process, they  
14 basically want their claim to essentially go on the super fast  
15 track, that is back to Judge Cohen, and deal with those issues  
16 at a time when we're consumed in the claims process with a  
17 particular thing, Your Honor. And that is, as you know, trying  
18 to figure out whether or not the trade claims and gucks are  
19 more or less than 1.7 billion dollars. And our focus, the  
20 energy of all the people who have come and working on claims,  
21 including the people in all the sections affected, have to be  
22 dealing with this issue. All right. Are focused on that. My  
23 biggest point here at the moment is I think this is premature  
24 and should be denied without prejudice to bring it back in four  
25 to six months. There's no prejudice that Cadence has shown.

1 That they waited fourteen months -- I mean, if I go through the  
2 litigation --

3 THE COURT: As far as the parties focusing on claims,  
4 how much will the people who are actually dealing with this  
5 litigation have to do that?

6 MR. BUTLER: Same claims team, Your Honor. I mean,  
7 now the claims team is dealing with billions of dollars of the  
8 claims. But, you know, people allocate -- it's the same  
9 process.

10 THE COURT: But most of those claims aren't patent  
11 claims, are they?

12 MR. BUTLER: No. It would be silly to say that  
13 most -- obviously, most of the patent claims, thousands of them  
14 are trade claims. Right? But we have -- we do have patent  
15 claims. Cadence isn't the only patent claim that's been  
16 presented here. And really, Cadence is coming to court and  
17 saying carve us out of all the processes, let us go back out to  
18 district court. By the way, the one we want to be on --  
19 because that's an open issue to at the end of the day. And, by  
20 the way, decide right now that whatever we decide out in  
21 Detroit is the administrative claim against this company.

22 THE COURT: Well, leave that aside. All right.

23 MR. BUTLER: I know. But that's the package that  
24 came to you.

25 THE COURT: Well, I understand. But which patent

1 claimants besides Cadence have opted out of the claims  
2 procedures?

3 MR. BUTLER: I don't have a list of that here today,  
4 Your Honor. I don't know if anyone does. There's been a  
5 couple. Bosch did, Technology Properties, there are others,  
6 it's not just Cadence.

7 THE COURT: And you still have the ability to  
8 estimate.

9 MR. BUTLER: I appreciate the fact that Mr. Connolly  
10 has conceded that point on this record. But I'm --

11 THE COURT: How many of the other patent claims  
12 allege ongoing infringement?

13 MR. BUTLER: I think virtually all of them. That's a  
14 standard kitchen variety, you know, argument. Just because  
15 they claim it doesn't make it so. But that's -- I believe, I  
16 haven't looked at the settlement, I believe most of those  
17 claims all argue that. And I'm just saying, Your Honor, the  
18 litigation out there has, you know, there's been no discovery  
19 conducted with respect to the damages phase. There's been --  
20 the discovery with respect to the liability hasn't been  
21 completed. This case isn't going to go to trial until 2008  
22 sometime, best case. All right. There's going to be appeals  
23 after from one side or the other. This is long complex patent  
24 litigation. They've waited fourteen months to come in. All  
25 I'm saying -- at the moment all I'm saying, Your Honor, is deny

1 it without prejudice and have them come back --

2 THE COURT: How does it even affect the 1.7 billion,  
3 then?

4 MR. BUTLER: Because it's still a guck, but we have  
5 to sort out what we think in our own minds, we have to  
6 demonstrate. We have a limited number of claims. I understand  
7 that this is a patent case and you can't make your final  
8 determination on that claim because they withdrew the  
9 reference.

10 THE COURT: But what I'm saying is you're not  
11 proposing to liquidate it before confirmation, are you?

12 MR. BUTLER: No. I'm not going to be able to, Your  
13 Honor. With that particular -- I'm going to end up at the end  
14 of the day, we're going to end up with claims process. This is  
15 a guck in the nature of the other general unsecured claims.  
16 That was not an adjective or characterization, it was a noun.  
17 But it is one of the things that falls in the 1.7 billion  
18 dollar bucket. When we're done with this process, which we are  
19 doing at an expedited basis, we're going to come down to a pile  
20 of claims, hopefully it's a small pile which we're not going to  
21 be able to get you to liquidate for various different reasons.  
22 And we have to sit with the plan investors and actually look at  
23 it and say, you know, it smells like X and they're going to  
24 have to -- and we'll have estimated it internally for them and  
25 they will have to say they agree with it or don't agree with it

1 because we're not going to get a court prima turon. And that's  
2 where this is going to fall at the moment. And all I'm saying  
3 is please don't divert -- cause us to divert the attention of  
4 the company on the claims administration process away from that  
5 1.7 billion dollar bucket. And I think -- Mr. Connolly  
6 conceded we're up to our sixth claims motion in three months.  
7 We're holding claims hearings twice a month. He wanted to opt  
8 out of that process, he didn't have to, he could have been in  
9 the process. He chose to carve himself completely out of the  
10 process, that's his entitlement to it. He did it, that's what  
11 the order says. All right. But that doesn't mean he also  
12 needs to -- he ought to be able to come in the moment he files  
13 and drops the lift stay motion in this Court after waiting  
14 fourteen months and we should say oh yeah, certainly, let's go  
15 start that litigation back up in Detroit. All I'm asking is  
16 that you deny the motion without prejudice. Let him come back  
17 in the summer, we have better visibility on these issues.  
18 Because I've got to figure this stuff up. All my colleagues,  
19 who are the ones who are really working on this, have to work  
20 out this 1.7 billion dollar issue over the next two or three  
21 months. And I'm just asking Your Honor to do that. They can't  
22 demonstrate prejudice, they haven't in their papers. And you  
23 say you've read all the papers in the Sonax stuff. There's no  
24 insurance for this, there's a variety of other matters that  
25 would weigh against this. And I would just ask the Court to

1 say let's look at this again in the light of where this case is  
2 midyear. That's all I'm asking. And the context of this  
3 litigation -- I don't think that prejudices Cadence. And the  
4 failure to do that will prejudice the debtors.

5 THE COURT: Well, I guess at this stage I appreciate  
6 that you're focused on resolving the unsecured claims. But  
7 given the procedures that are in place, generally -- given the  
8 unusual nature of this claim -- I appreciate, I think, you have  
9 to focus on it anyway to some extent. And I don't know what  
10 caused the mediation to fall apart, whether it was the  
11 bankruptcy itself that did or not but --

12 MR. BUTLER: I'm not aware, Your Honor.

13 MR. CONNOLLY: It was before the bankruptcy, Judge, I  
14 may just add that. It was not as a result of the bankruptcy  
15 filing. I think there may have been -- it was a pretty heated  
16 litigation, there is new management at Cadence and we had made  
17 that fact known to the debtors as well in this context.

18 MR. BUTLER: Well, why couldn't we agree to have a  
19 mediation over the next sixty days, you know --

20 THE COURT: Well, that's something you could  
21 certainly raise with the district judge, and I would certainly  
22 encourage it.

23 MR. BUTLER: Well, you could also require it before  
24 you lift the stay, Your Honor. And --

25 THE COURT: What do you think, Mr. Connolly? Now

1 that they know what the --

2 MR. BUTLER: And leave a level playing field.

3 MR. CONNOLLY: Well, Your Honor, their playing field  
4 is unlevel sometimes.

5 THE COURT: No. Leave that aside. It seems to be  
6 that there's some value in doing that.

7 MR. CONNOLLY: Well, Your Honor, I --

8 THE COURT: I mean, in some respects they would be  
9 focusing more on you, then. I think any good patent litigator  
10 could delay a patent case a long time. And to actually have  
11 the debtors focus for sixty days instead is not a bad thing.

12 MR. CONNOLLY: Well, if the structure of the order  
13 mediation and the stay is lifted, unless it could obviously --  
14 if we settle, we settle. If the stay is lifted after the sixty  
15 days that's one thing. If we're back again then I would  
16 contend that we ought to go and lift the stay.

17 THE COURT: No. It would be a condition to relief  
18 from the stay, good faith mediation.

19 MR. CONNOLLY: And, Judge, I have expressed to Mr.  
20 Lyons, my clients, but they're five miles away from Delphi's  
21 headquarters and so we would be happy to have a conversation  
22 with them. Is the Court proposing, Mr. Butler proposing,  
23 however, not a settlement negotiation but an appointment of a  
24 mediator and/or are we really talking about just a good faith  
25 settlement conference? And if we don't --

1 THE COURT: I don't know, what would you prefer?

2 MR. BUTLER: I'd prefer some meaningful alternative  
3 to dispute resolution.

4 THE COURT: I think having a mediation is helpful. I  
5 don't know if the people on your list, if any of those people  
6 deal with patent issues. I would assume you might because of  
7 the nature of the debtor's business. But I think having --  
8 unless you want to get into it, a lengthy mediation, having a  
9 suitable period on the patent issues is more than -- you know,  
10 takes more than a couple of days to prepare for something like  
11 that. But I think sixty days for a mediation and that the stay  
12 would be lifted thereafter unless there's a settlement.

13 MR. CONNOLLY: Judge, I think that would be fine. I  
14 looked at the mediators, I'm familiar with some of them. Judge  
15 Farlin, Judge Katz, I think they're both on the list. I'm not  
16 aware of their expertise in patent areas. So I would think  
17 that we would want to have conversation about bringing in  
18 somebody.

19 THE COURT: That's fine. All right. So if you want  
20 to submit an order to that effect?

21 MR. BUTLER: And on the administrative claim  
22 motion --

23 THE COURT: I'm going to deny that without prejudice  
24 as being premature.

25 MR. CONNOLLY: Thank you, Your Honor. One issue on

1 that concession that we made. I mean, the point I was making  
2 in my remarks is I understand that at some point someone may  
3 file an estimation motion. We will deal with --

4 THE COURT: Oh, yeah. All your rights are reserved  
5 on it. I just wanted to make sure you weren't seeking relief  
6 from the stay so that's the only place where the claim can be  
7 dealt with.

8 MR. CONNOLLY: I understand, Judge. And it may be  
9 that we end up filing a motion and maybe the debtors and maybe  
10 we end up settling and certainly that's a laudable goal.

11 THE COURT: Okay. All right. Good.

12 MR. CONNOLLY: Thank you, Your Honor.

13 THE COURT: Okay.

14 MR. BUTLER: Okay, Your Honor, for turning back,  
15 then --

16 THE COURT: So you don't have to -- obviously, you  
17 don't have to settle it, but obviously I'm sure you're going to  
18 go over the order with Mr. Connolly. Or Mr. Connolly, you'll  
19 go over it with Mr. Butler. One or the other.

20 MR. CONNOLLY: Yes, Judge. We'll put something  
21 together and get it to the Court posthaste.

22 THE COURT: Okay.

23 MR. BUTLER: Can I have a moment, Your Honor?

24 THE COURT: Yes.

25 MR. BUTLER: Your Honor, the next matter on the

1 agenda is matter number 8. It's the fourth omnibus claims  
2 objection found at docket number 6099. And this particular  
3 objection deals with duplicate and amended claims. We have  
4 sought to expunge and disallow some 772 proofs of claims  
5 asserting liquidated damages of approximately 140 million  
6 dollars which we believe would be duplicative of other claims,  
7 or they've been amended and superseded. There have been  
8 thirteen responses by holders of duplicate or amended claims.  
9 As we have with other omnibus objections, we have eliminated  
10 those parties, you know, in terms of future claims hearings.  
11 We also, Your Honor, we filed a reply with respect to that. We  
12 also agreed to adjourn the hearing on the debtor's objection to  
13 certain claims of four unions, the IMAW, the IBEW, the IUOE,  
14 and IUE-CWA. And the deadline for those unions to file a  
15 response will be February 7th, and the deadline for us to file  
16 a reply will be February 13th. We also agreed to adjourn the  
17 DVM Technologies claim until February 14, 2007. There's also  
18 been an agreement to adjourn a hearing on the Hazel Emerett's  
19 claim to a future hearing date to be set by the debtors. So  
20 we're dealing right now, Your Honor, with uncontested claims,  
21 totally about 279 claims with liquidated damages of about 59  
22 million dollars. And I think that resolves the things we  
23 have -- I do want to put some -- I think I need to put a few --

24 THE COURT: So there's no -- you're only going  
25 forward with claims where there was no opposition?

1 MR. BUTLER: Correct. And I do believe that I --

2 THE COURT: Are there some that you resolved too?

3 MR. BUTLER: There are. I think there's a few  
4 statements I have to place on the record if I understand where  
5 we are in that. There was some informal responses and that was  
6 Mercedes Benz and Sierra Liquidity Fund. And we added some  
7 individual language to the claims objection order that we  
8 submitted with respect to Mercedes which said that the entry of  
9 the order without prejudice to Mercedes in its separate motion  
10 filed at docket number 4778. And that their rights and the  
11 debtor's rights regarding that motion were expressly preserved.  
12 And for Sierra we added language which said notwithstanding the  
13 docketing of claims, claims numbers 15975, 15981 and 15986 were  
14 deemed to be asserted against Delphi Automotive Systems, LLC,  
15 claim 15983 to be asserted against Delphi Medical Systems,  
16 Colorado Corporation and claim number 15984 against Delphi  
17 Electronic Systems, Inc. And that's all indicated, Your Honor,  
18 in the black-line order that we provided to the Court.

19 THE COURT: Okay. All right. Does anyone have  
20 anything to say on this? All right. I will approve the fourth  
21 omnibus claims objection as set forth on the record and in the  
22 proposed order, the black lined as being unopposed and as  
23 supported by the objection.

24 MR. BUTLER: Thank you, Your Honor. Your Honor,  
25 matter number 9 on the agenda is the fifth omnibus claims

1 objection filed at docket number 6100. This is the debtor's  
2 second objection of proofs of claims. And we've objected in  
3 this particular claims objection to two categories of claims.  
4 First, those with insufficient documentation and second, those  
5 with liabilities not reflected on the debtor's books of record.  
6 This particular omnibus objection covers thirteen claims where  
7 there have been insufficient documentation and 159 claims where  
8 liabilities of dollar amounts that don't match the debtor's  
9 books and records. We have received nine formal responses to  
10 the objection. Eight of those were timely; one was filed on an  
11 untimely basis. And we also received three separate responses  
12 that we don't believe were docketed on the Court's record but  
13 which we did receive on behalf of the debtors. Those responses  
14 cover fifteen proofs of claim asserted for about 10.8 million  
15 dollars worth of damages. And, therefore, for purposes of  
16 today we seek relief only on the uncontested portions of the  
17 fifth omnibus claims objection and that would cover 160 claims  
18 asserting liquidated damages of about 16 million dollars. The  
19 hearing with respect to the claim with formal responses have  
20 been filed as being adjourned pursuant to the claims objection  
21 order and the reschedule in accordance with that order. And I  
22 don't think that there's anything I need to say particularly  
23 about any of the responses in the form of order we submit.

24 THE COURT: Okay. As far as the claim objection,  
25 "the amount stated in the claim differs from the amount in the

1 debtor's books and records," you're not allowing it yet in the  
2 amount of the debtor's books and records, or are you allowing  
3 it in that number?

4 MR. BUTLER: No.

5 THE COURT: You're not. It's just being disallowed  
6 in the amount that differs at this point?

7 MR. BUTLER: Correct.

8 THE COURT: Okay. All right. I'll approve the fifth  
9 omnibus objection as set forth on the record in the amended  
10 black-line order on the basis that there's no opposition to it  
11 and for the reasons stated in the objection.

12 MR. BUTLER: Thank you, Your Honor. Your Honor, the  
13 next matter which we dealt with at the end of the prior  
14 hearing, but I simply want to state in the record, is the  
15 debtor's third motion for extension of exclusivity filed at  
16 docket number 6285. There have been two objections in a  
17 statement filed. The objections of the creditors' committee,  
18 at docket 6440, and of Highland Capital, 6442. Both have been  
19 withdrawn. There is -- just for purposes of this evidence, I  
20 would like to put in, just as an evidentiary record here, Mr.  
21 Sheehan's written declaration which is pre-submitted to Your  
22 Honor. I move that into evidence.

23 (Sheehan Declaration Admitted Into Evidence, as of this date.)

24 THE COURT: That's admitted. And I did consider that  
25 as well as the motion. (A) it's not unopposed, and (b) I find

1 that the debtor has set forth cause in light of the work that  
2 it's done to date as well as the work that it will be doing  
3 over the extended period, or the extended exclusivity period.

4 MR. BUTLER: Thank you, Your Honor. The last matter  
5 on the agenda, number 11, is Mr. Berger's.

6 MR. BERGER: This is a first pre-trial conference for  
7 an adversary proceeding commenced by the debtors against NYCH  
8 RCS Computer Experience. The defendant is a retail seller for  
9 electronics here in Manhattan. The debtor sold some goods and  
10 predominantly satellite radios to the defendant. The  
11 defendant's answer asserted some type of rebate program in  
12 place; we made it in a formal discovery request. We anticipate  
13 getting documents from them to determine whether or not the  
14 rebate program was in place by their reply. And if it did  
15 apply, our calculation on reduction of the amount is by the  
16 debtors. We've agreed, subject to Your Honor's consent, to  
17 adjourn this to the February date.

18 THE COURT: Okay. That's fine.

19 MR. BERGER: Thank you, Judge.

20 MR. BUTLER: Your Honor, that completes the omnibus  
21 hearing. And I think you stated you wanted to take a recess  
22 before the --

23 THE COURT: Well, yes. There may be some people here  
24 already on the first scheduled claim objection hearing. I've  
25 been going since 9:30 this morning so I'm going to take a brief

1 recess for lunch. And be back at 3:15.

2 MR. BUTLER: Thank you, Your Honor.

3 (Recess from 2:35 p.m. to 3:37 p.m.)

4 THE COURT: Please be seated. Okay. Delphi  
5 Corporation. First of all, let me say I'm sorry I'm a little  
6 late. Something came up in another case that I had to deal  
7 with. But we're here on substantive aspects, limited to  
8 sufficiency hearing aspects, on various claim objections.

9 MR. LYONS: Yes. Good afternoon, Your Honor. John  
10 K. Lyons on behalf of the debtors. With me in court I have  
11 Randall G. Reece and Eric Howe who are working on the claims  
12 matters at Skadden and also on Mr. Dena Unrou and Karen Kraft  
13 at Delphi who are also part of the claims team. I want to  
14 introduce the rest of the team, you've seen them over the last  
15 couple of days, from Delphi. Well, Your Honor, with your  
16 permission I could go straight to the agenda and --

17 THE COURT: That's fine.

18 MR. LYONS: Okay. The first item, Your Honor, we  
19 have three responses that were carried over from the second  
20 omnibus claims hearings that we did not have enough time to  
21 resolve on November 30th. We have resolved those three  
22 responses filed by Cadence EDS and Bosch. And, Your Honor,  
23 first with respect to Bosch, I have a stipulation that I'd like  
24 to hand up which the parties have executed and resolved as to  
25 the matter.

1                   THE COURT: Okay. Well, you can hand it up at the  
2 end of the hearing.

3                   MR. LYONS: Okay. Very good. Well, then I'll just  
4 briefly explain what we've done. Similar to what we've done in  
5 the order expunging claims subject to the second omnibus  
6 hearing included language which allows the claimant, if we've  
7 expunged a duplicate claim from one of the estate, to in  
8 essence switch it back to that estate if it turns out that that  
9 estate ultimately is liable.

10                  THE COURT: All right.

11                  MR. LYONS: Also, we've preserved joint and several  
12 liability if they believe that there's joint and several  
13 liability amongst the debtors, those rights are preserved and  
14 will not be prejudiced by the expungement of the duplicate  
15 claims. So those are the general themes running through these  
16 three resolutions that agreed language.

17                  THE COURT: Okay.

18                  MR. LYONS: Bosch would be a separate stipulation  
19 which gives Your Honor after the hearing. And then we have an  
20 order with respect to Cadence at EDS. And, Your Honor, I do  
21 however need to read in some language with respect to EDS as  
22 pursuant to the agreement of the parties.

23                  THE COURT: Okay.

24                  MR. LYONS: Okay. First, the debtors and EDS have  
25 agreed to a resolution to an error appearing in paragraph 12 of

1 the third omnibus claims objection order. Specifically, the  
2 order adjourns the hearing with respect to the claims of  
3 Electronic Data Systems Corporation, EDS Information Services,  
4 LLC and EDS de Mexico SA, the CVs which were subject to the  
5 third omnibus claims objection to January 12, 2007. The  
6 debtors acknowledged that the hearing on EDS's claim has not  
7 been adjourned to today's hearing, but rather has been  
8 adjourned to a future hearing to be set pursuant to the claims  
9 objection procedures order as clarified on the record at the  
10 November 30, 2006 hearing with respect to its application to  
11 EDS.

12 THE COURT: Okay.

13 MR. LYONS: And again, Your Honor, we have been  
14 through -- I've already explained what the content of the order  
15 for EDS and Cadence will be. One addition we have that was not  
16 in the previous or the second omnibus order with respect to  
17 Cadence is that Cadence has required language so stating that  
18 nothing -- "notwithstanding any provision of this order,  
19 nothing contained in the order shall impair, affect or  
20 otherwise limit the ability of Cadence to assert at any time  
21 against any of the debtors any claim asserted in the surviving  
22 claims of Cadence, including but not limited to in connection  
23 with voting on a new plan of reorganization proposed by any  
24 party in interest and in connection with any distributions  
25 under the plan." Frankly, it's a clarification, we never

1 intended to do that anyway but that's what the order will  
2 provide as well.

3 THE COURT: All right.

4 MR. LYONS: Finally, with respect to the resolution  
5 of Cadence, Mr. Connolly and I have come up with a five point  
6 statement that I will read into the record, which Mr. Connolly  
7 requested be read into the record which will then resolve the  
8 case duplicative issue.

9 THE COURT: Okay.

10 MR. LYONS: First, Your Honor -- and I will so  
11 confirm. "(1) An admission or stipulation on the record in  
12 court. (2) By counsel with authority to stipulate on behalf of  
13 all debtors." So confirmed by me. "(3) That DAS LLC is the  
14 only debtor, (4) that has made, used, offered for sale or sold  
15 any air bag covers, including the air bag covers that Cadence  
16 alleges infringe its patents (5) during the time period January  
17 1, 1999 to the present." So I will confirm that representation  
18 on behalf of the debtors and I believe Mr. Connolly may want to  
19 say --

20 THE COURT: When you say DAS, is that the actual name  
21 of it or is that an acronym?

22 MR. LYONS: That is a defined term that we have been  
23 using, it's Delphi Automotive Systems, LLC.

24 THE COURT: Okay.

25 MR. CONNOLLY: Thank you, Your Honor. Dennis

1 Connolly, on behalf of Cadence. I think that resolves it, Your  
2 Honor, the two surviving claims were the ones I mentioned  
3 previously in the stay relief argument which is Delphi Auto  
4 Corporation or Delphi Corporation, I think there's been a name  
5 change, which is claim number 10100, and then the so-called DAS  
6 claim which is claim number 10111. And I believe that the  
7 order reflects that. But if it doesn't, we'll obviously make  
8 any confirmatory changes or clarifications to it. And that  
9 resolves the second omnibus objection and obviously we will  
10 deal with the third depending on the outcome of mediation and  
11 where we go from there.

12 THE COURT: Okay. Very well.

13 MR. CONNOLLY: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. LYONS: Okay. Your Honor, before we turn to the  
16 sufficiency matters, if I can hand up to Your Honor -- at the  
17 last claims hearing I provided a summary that shows where we  
18 are in the process, what the claims are pursuant to the omnibus  
19 objections and also the scheduled claims that are slated for  
20 hearing pursuant to the procedures order. If I can hand that  
21 up to Your Honor?

22 THE COURT: That's fine.

23 MR. CONNOLLY: Your Honor, may I be excused?

24 THE COURT: Yes.

25 MR. CONNOLLY: Thanks very much.

1                   THE COURT: Okay. And as we go along, if someone is  
2 here on a particular claim and that's a claim that has been  
3 resolved and you don't want to stay you should feel free to go  
4 also.

5                   MR. LYONS: And, Your Honor, as the summary notes,  
6 after giving effect to the orders we're going to submit to Your  
7 Honor later today, we will have expunged through five omnibus  
8 objections over 8.5 billion dollars in claims. And there are  
9 currently roughly 518 million that are currently in process  
10 that have been subject to the omnibus objections, have the  
11 objections pending. And then the second chart that I handed up  
12 to Your Honor is a list of the schedule of the claims that have  
13 been noticed pursuant to procedure that are actually in line  
14 now for Your Honor's adjudication. I'm happy to report we have  
15 been making progress with a lot of these claims. I think the  
16 procedures have been working quite well, we've had a number of  
17 meet and confers and we've had a number of claims that have  
18 been resolved. And we're still working very zealously to try  
19 to get through this process in a very efficient, timely matter.

20                  THE COURT: Okay.

21                  MR. LYONS: Your Honor, the first sufficiency matter  
22 is with respect to the debtor's third omnibus claims objection,  
23 with respect to seven proofs of claim filed by Lafonza  
24 Washington. Your Honor, Mr. Washington filed seven proofs of  
25 claims. The numbers, I believe, are noted on the agenda to the

1 third omnibus objection. Each of the proofs of claims asserts  
2 that the claimant is entitled to a thirty million dollar  
3 unsecured priority claim on a number of grounds including  
4 involuntary servitude, six years of decoration of General  
5 Motors related income and severance pay due to the claimant  
6 based on the July 2, 1999 closing of the Buick City plant owned  
7 and operated by General Motors. According to the claimant's  
8 proof of claim, which again, is what we are looking at, we're  
9 asking Your Honor to rule on these under a standard that Your  
10 Honor approved in the procedures of a motion to dismiss  
11 construed all allegations to be true. According to the  
12 claimant's proof of claim, Mr. Washington was employed by GM  
13 for thirty-two years. But when the Buick City plant was closed  
14 in 1999, claimant was given an option to transfer to Delphi's  
15 manufacturing facility in Saginaw. He apparently declined this  
16 offer. Your Honor, this is the only nexus to Delphi. Mr.  
17 Washington was never an employee of Delphi. He was merely  
18 given an option to transfer into a Delphi plant. And we've  
19 scrubbed through and gone through the various pleadings and  
20 papers filed by Mr. Washington and, Your Honor, there's just no  
21 nexus to the debtors other than that nexus. And again, we  
22 filed the papers. Your Honor has had those. And frankly, we  
23 rely on our papers and would request the Court to expunge Mr.  
24 Washington's claim.

25 THE COURT: Okay. Is anyone here on behalf of Mr.

1 Washington or on the phone? All right. What I'm about to say  
2 as far as the standard by which I'm reviewing these claim  
3 objections goes for each one of them. So I'm not going to  
4 repeat it. The debtors correctly cite the applicable standard  
5 for purposes of this hearing, which is that the claimant has  
6 the initial burden of alleging facts sufficient to support  
7 legal liability against the debtors or a particular debtor, and  
8 in order to obtain the presumption of validity of the filed  
9 claim. That's set forth at length and accurately in *In re*  
10 WorldCom Inc., 2005 WL 3832065 (Bankr. S.D.N.Y. December 29,  
11 2005), which in turn cites to *In re Allegheny Int'l, Inc.*, 954  
12 2d 167, 173-174 (3d. Cir. 1992). That is notwithstanding  
13 Bankruptcy Rule 3001(f), and in fact it is consistent with Rule  
14 3001(f), which provides: "Evidentiary effect: a proof of claim  
15 executed and filed in accordance with these Rules shall  
16 constitute prima facie evidence of the validity and amount of  
17 the claim." The key phrase there is "filed in accordance with  
18 these Rules which include rules," 3001(a) (requiring the filing  
19 to be consistent with the official form) and in these cases,  
20 because these are not secured claims, 3001(c), which requires  
21 there to be evidence of a writing if the claim is based upon a  
22 writing, as well as Bankruptcy Rule 9014 which applies to  
23 contested matters (a claim objection being a contested matter).  
24 Previously, this Court has adopted pursuant to Rule 9014(c)  
25 Rule 7012, which in this context means that I'm reviewing these

1 claims on a motion-to-dismiss basis. That is, in light of the  
2 allegations in the claim and assuming for purposes of this  
3 determination, although, of course, the debtors do not concede  
4 this assumption ultimately, if I were to proceed on the merits,  
5 I would have to consider whether the assumption is actually  
6 borne out by the facts; but, considering the assumption that  
7 the allegations set forth in the claim are true, I need to  
8 determine whether even if that were the case that the claim  
9 states a basis for a claim against the debtor in any fashion.  
10 See for example Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

11 I've reviewed Mr. Washington's proof of claim and the  
12 attachments thereto, as well as the various other pleadings  
13 that he's filed with the Court that arguably attempt to assert  
14 a claim in response to the debtor's claim objection. And I  
15 agree with the debtors that those filings do not set forth, on  
16 a motion-to-dismiss basis, a basis for any claim against the  
17 debtors. That is because, as counsel has stated, he never  
18 alleges any employment by any of the debtors. If Mr.  
19 Washington has any claim, and I'm not considering whether he  
20 does or he doesn't, against any third party, that claim will be  
21 against a third party if he, in fact, has one. But there's  
22 nothing in these claims that suggests any claim that would  
23 survive a motion to dismiss against the debtors. I'm assuming  
24 you'll submit orders on each of these.

25 MR. LYONS: Well, Your Honor, we were planning on

1 submitting --

2 THE COURT: Or you can deem the order -- I want to  
3 deal with the fact that I want to avoid the situation where an  
4 appeal of one determination holds up all the other matters. So  
5 if you're going to do an omnibus order you should do it with  
6 the paragraph that you've done in the past which says that an  
7 order granting these objections is deemed to be a separate  
8 order with respect to each claim.

9 MR. LYONS: Correct.

10 THE COURT: Okay.

11 MR. LYONS: We will do, Your Honor. Okay, Your  
12 Honor, next on the agenda are items 3 through 8. And these  
13 particular sufficiency objections relate to claims that have  
14 been filed by common stockholders, either former or current  
15 employees of Delphi in the retirement stock plan or other  
16 common stockholders. And with Your Honor's permission, I would  
17 like to subgroup these because certain of the claims have  
18 common issues that are not common to others. In particular, I  
19 would like to take agenda item and I'll just go in order. 3,  
20 which is Mr. Sieloff. 4, which is Mr. Jorgenson. 5, which is  
21 Mr. Mocny. 6, which is Mr. Kerscher. And 8, which is Mr.  
22 Downey. It's basically excluding Mr. Deykes for the present  
23 moment. And I would like to just argue the merits of our  
24 sufficiency objection with respect to those five claims at this  
25 time.

1 THE COURT: Okay.

2 MR. LYONS: Your Honor, as we set forth in our  
3 papers, Messrs. Downey, Mocny, Kerscher, Jorgenson and Sieloff  
4 all filed proofs of claims on account of their common stock.  
5 They're all different in certain respects. All have basically  
6 sought creditor status for loss and value of their common stock  
7 from the time that they acquired that stock until the time that  
8 they either sold that stock or the current value. In addition,  
9 they haven't made allegations, general allegations, regarding  
10 their entitlement to a claim based upon alleged fraud that the  
11 debtors have committed. They've made references to SEC  
12 investigations, press releases and other statements. And I  
13 could certainly go through for each of the claims what I think  
14 the key statements have been. But as set forth in our papers,  
15 Your Honor, we do not believe that these statements state fraud  
16 with particularity which we believe is required under the  
17 Federal Rule of Civil Procedure 9(b) which should be applied  
18 here to the proof of claim as Judge Beatty held in In re  
19 Rockefeller Center Properties. So I guess the initial  
20 question, Your Honor, is we believe that these claims should be  
21 viewed in light in the prism of Rule 9(b) to determine whether  
22 or not these claims sufficiently state fraud with  
23 particularity, which we believe they do not. In particular,  
24 Your Honor, Mr. Sieloff -- I'd be happy to go through the  
25 individual claimants if Your Honor would find it helpful.

1                   THE COURT: Well, I've been through them. And if  
2 they're here they're certainly free to speak, too. One of  
3 these at least, also asserts a claim for, I guess, breach of  
4 fiduciary duty, which is Mr. Kerscher, in connection with a  
5 401K.

6                   MR. LYONS: Yeah. I believe that was -- that might  
7 have been Mr. Downey.

8                   THE COURT: Well, he does also. But I think Mr.  
9 Kerscher does too, at least in his response he says that  
10 there's a 401 -- this was held in a 401K. My question to you  
11 is, was any of the debtors itself a fiduciary in connection  
12 with the 401K, was there a debtor that was a plan administrator  
13 here or in any other sense of fiduciary?

14                  MR. LYONS: No, Your Honor. There was a third-party  
15 administrator.

16                  THE COURT: Okay. All right. Well, let me focus  
17 first on the fraud claims. As I take it, your point is  
18 twofold. One is that the alleged fraud is not pled with  
19 particularity, and that means, for those who are not lawyers,  
20 identification of a statement, when it was made, who made it,  
21 and how it was relied upon and detriment. And then in  
22 addition, you allege that no claim sets forth any purchase or  
23 sale either.

24                  MR. LYONS: For a number of the claims. There are  
25 certain instances where they allege fraud was in connection

1 with their acquisition of the stock but --

2 THE COURT: Which one is that -- are those?

3 MR. LYONS: That was, I believe, Mr. Jorgenson.

4 THE COURT: Yes, that's right.

5 MR. LYONS: Yeah. Mr. Jorgenson was the one who was  
6 clearest on that point.

7 THE COURT: Okay.

8 MR. LYONS: But other than that, the general nature  
9 of these claims is that they had lost -- they're seeking a  
10 claim for the loss of value of their holdings and did not sell  
11 because they did not have accurate information.

12 THE COURT: Okay. All right. Well, maybe I should  
13 take them in order. Is anyone here on behalf of Mr. Sieloff,  
14 or is he on the phone? All right. I reviewed Mr. Sieloff's  
15 proof of claim as well as his response. And particularly in  
16 light of the fact that he does not assert any fraud in  
17 connection with the purchase or sale of a security but rather  
18 the fact that he owns securities and that unidentified fraud  
19 occurred at the company, I conclude that he's not set forth a  
20 claim sufficient to withstand a motion to dismiss under Rule  
21 7012.

22 I don't have the same view with regard to Mr.  
23 Jorgenson's claim. I think particularly in light of the fact  
24 that he's appearing pro se, I believe, although it's a close  
25 call, he's asserted enough as far as "positive information"

1       conveyed at employee meetings in connection with buying -- and  
2       that he relied upon that -- in buying stock, that for these  
3       purposes I think you need to proceed further with him.

4                     Is anyone here for Mr. Mocny? All right. I reviewed  
5       Mr. Mocny's claims and the material he submitted. As with Mr.  
6       Sieloff, he does not allege with sufficient particularity the  
7       basis for a fraud, including, most importantly, what was said  
8       as causing any damages to him in connection with the purchase  
9       or sale of his security or any reliance upon what was said or  
10      not said to him, but, rather, a less particular allegation  
11      which really comes down to he owns stock and the company was  
12      not during the time that -- the company has been alleged to  
13      have committed some form of fraud in connection with its  
14      financial disclosures during the period that he held stock.  
15      And that does not sufficiently establish a causal nexus between  
16      the damages he alleges and any alleged fraud.

17                  Is anyone here from Mr. Kerscher? All right. I  
18      asked about him because it seemed to me that conceivably he was  
19      alleging in addition to a fraud claim a breach of fiduciary  
20      duty claim. And it might be that a fiduciary would have a  
21      heightened obligation with respect to those who currently own  
22      stock to not engage in any sort of fraud. However, he does not  
23      allege that Delphi was a fiduciary to the 401K plan that he  
24      refers to. And moreover, as with Mr. Mocny and Mr. Sieloff, he  
25      does not describe the alleged fraud with sufficient

1           particularity to show that it would give rise to a claim by him  
2           against the debtors.

3                         So with regard to Mr. Sieloff, Mr. Mocny and Mr.  
4                         Kerscher, you can submit an order disallowing their claims. I  
5                         will not grant the claim objection on a sufficiency basis with  
6                         respect to Mr. Jorgenson.

7                         MR. LYONS: Very good. And, Your Honor, we also have  
8                         Mr. Downey. Mr. Downey, again, did not allege fraud. He had a  
9                         very conclusory statement that the debtors breached their duty  
10                        to protect their retirement account.

11                       THE COURT: Right.

12                       MR. LYONS: And again, Your Honor, it's a conclusory  
13                        statement. He does not identify debt.

14                       THE COURT: That there is a fiduciary?

15                       MR. LYONS: That is a fiduciary, correct.

16                       THE COURT: Is Mr. Downey on the line or present?  
17                       All right. For the same reason that I concluded that Mr.  
18                       Kerscher's conceivably asserted fiduciary duty claim would not  
19                       survive a motion to dismiss, I conclude the same with regard to  
20                       Mr. Downey. He does not set forth any basis other than saying  
21                       that Delphi was a fiduciary, generally as to how Delphi was, in  
22                       fact, a fiduciary to him, including without limitation in  
23                       respect to the 401K retirement plan. So you can submit an  
24                       order with regard to Mr. Downey too.

25                       MR. LYONS: Thank you, Your Honor. Okay, Your Honor,

1 that leaves Mr. Deykes, which is item number 7 on the agenda.  
2 Your Honor, we filed a response and a notice to Mr. Deykes's  
3 response. And as initial matter, Your Honor, the initial  
4 amount in the proof of claim is 40,000 dollars. In his  
5 response, Mr. Deykes conceded that the loss in value is a  
6 actually a lot less, 8,588 dollars. So I wanted to bring that  
7 to Your Honor's attention. This is different than the others,  
8 as Your Honor may know. This is based upon -- and Mr. Deykes  
9 is on the phone so he can certainly articulate it. But it's  
10 based on the inability of Mr. Deykes to get clearance from the  
11 company after he left Delphi's employment to sell his shares.  
12 Mr. Deykes didn't work in the audit department and did help the  
13 company, from what I understand from his papers, responding to  
14 the SEC's subpoena. He was consistent with the company's  
15 policy. E-mails did go out that stated that they needed to get  
16 free clearance in order to alter their investment portfolio,  
17 their 401K. He subsequently left the company and then had  
18 sought, after he had left the company, to obtain clearance from  
19 the company to sell the shares. Your Honor, I guess the crux  
20 of our argument is there is no identified duty. Once he left  
21 the company -- again, if Mr. Deykes thought he had material,  
22 non-public information, he would be, as a matter of law,  
23 prohibited from trading on that information and that's  
24 something that Mr. Deykes was aware or was not aware of. And  
25 again, there is no identified duty that Delphi breached by, in

1 essence, not approving what he was going to do. So we've  
2 searched and looked at his response and tried to see if there  
3 was a legal claim there. But again, since he had left the  
4 debtor's employment we do not believe that any claim really has  
5 been articulated by Mr. Deykes that would support a proof of  
6 claim.

7 THE COURT: All right. Mr. Deykes, you're on the  
8 phone?

9 MR. DEYKES: Yes, Your Honor, I am.

10 THE COURT: Okay. It wasn't clear to me from reading  
11 your claim as to what was it that Delphi did that created the  
12 claim?

13 MR. DEYKES: With the restriction that was placed on  
14 the (indiscernible) for the securities had occurred during my  
15 employment. During my employment I had requested -- right at  
16 the end, before I left, I requested permission to sell the  
17 stock and I did not receive a response, though. If I could  
18 correct the statement the gentleman just made. My request  
19 didn't come after employment, that actually came at the tail  
20 end of my employment with Delphi. So my understanding was that  
21 a pre-clearance was required, be careful being employed or not  
22 employed since there was a presumption that I had about public  
23 information or could have.

24 THE COURT: Well, how soon before you left was the  
25 request made?

1                   MR. DEYKES: I had given a three-week notice and at  
2 the time I gave my notice of separation I had initiated my  
3 request at that time. So three weeks before departing and  
4 right after departure of that letter.

5                   THE COURT: I'm sorry. The request was made more  
6 than once or was it made just three weeks before you left?

7                   MR. DEYKES: No, I'm sorry. There were three  
8 separate requests. I had made one three weeks before I left  
9 the company and then one just after leaving and one a bit  
10 later.

11                  THE COURT: All right. Does the restriction apply to  
12 people who are not employees of the company? Is there any  
13 issue as to that? Mr. Deykes, do you take the position that  
14 there's a restriction that applied after you left the company?

15                  MR. DEYKES: Yes, Your Honor. That is my impression.

16                  THE COURT: As a contractual matter, I'm not talking  
17 about a legal matter. Generally, you know that you might have  
18 a duty generally under the securities laws, but as a  
19 contractual matter with the company?

20                  MR. DEYKES: That's correct, that's correct, yes.

21                  THE COURT: All right.

22                  MR. LYONS: Your Honor, I guess I would add that he's  
23 attached no contract. I mean, again, there's no contract and I  
24 don't believe there is any contract, certainly, where we have  
25 that type of provision. And, you know, typically if you have a

1 contract claim you need to attach the underlying contract in  
2 order to determine whether there is indeed a contractual duty  
3 that could be breached. So we respectfully submit that the  
4 mere statement that there's a contract is not sufficient.

5 THE COURT: Let me look at the claim again.

6 MR. DEYKES: Your Honor, if I may?

7 THE COURT: Yes. I'm just pulling up your claim.  
8 That's why it's silent here, they're watching me thumb through  
9 a document.

10 MR. DEYKES: I guess my assumption as I'm indicating,  
11 I'm working with the internal function and, of course, in part  
12 a solution in compliance to laws and regulation. My  
13 understanding was that if the directive coming from legal was  
14 based on the insider trading laws and that the direction I took  
15 on this saying that I was bound by it regardless of whether I  
16 was told or not. And simply based on the presumption I have  
17 inside information. There were other documents that were  
18 provided to employees as attachments to the e-mail as provided,  
19 but I don't have possession of that and that would be a  
20 document that would be in Delphi's possession.

21 THE COURT: All right. I'm looking at the proof of  
22 claim and -- I'll read it out loud. It's the attachment. "My  
23 claim is based on ownership of Delphi Equity Securities and  
24 associated losses due to the decline in value of the securities  
25 and based on management's specific actions and inactions. As

1 an employee of Delphi's internal audit department, I  
2 participated in the internal and subsequent investigation of  
3 management's actions. I, along with other employees involved  
4 in this investigation, were notified that we were deemed  
5 insiders and were barred from executing any securities  
6 transaction. During this time, the value of the securities  
7 declined." If that was the only basis for the claim it would  
8 be disallowed because that's not sufficient. Then it goes  
9 along to say "in March of 2005 I terminated my employment with  
10 Delphi. Shortly thereafter, I inquired with Delphi's legal  
11 staff as to whether the prohibition to sell securities still  
12 applied to me. Delphi's legal staff was unresponsive to my  
13 inquiries." Again, since the claim itself says that you made  
14 the inquiry after you left, it does not seem to me that you're  
15 basing it on an agreement or obligation that Delphi owed you  
16 some duty in respect of. Now what you said to me a few minutes  
17 ago suggests something different. And I think that leads me to  
18 come out as follows. The proof of claim itself does not set  
19 forth a recognizable or cognizable claim because it doesn't  
20 really specify any -- even if these facts are true, Delphi  
21 wouldn't have any particular duty to you. On the other hand,  
22 if there was an agreement with Delphi that required Delphi to  
23 release you of an obligation if, you know, under some  
24 circumstances, however that would be phrased, then it might  
25 have been a duty. And if it breached that duty, then you would

1 have a claim. So the bar date has passed. You can always seek  
2 to file a late claim if that type of claim that I just  
3 described and that you described to me just now over the phone  
4 is one that you can support with an agreement. I'll consider  
5 whether you can file your claim late. And given the size of  
6 the claim and the scope of this case, I might well permit you  
7 to file it late. But that depends on what I see when you file  
8 it. But as this claim is laid out, it does not set forth, even  
9 if I accept all the facts in here as true, that Delphi violated  
10 any obligation to you. But again, if there was a policy or an  
11 agreement that Delphi allegedly breached by not complying with  
12 the procedures set forth to give you clearance, that would be a  
13 different matter, potentially. So the order should reflect  
14 that this claim is disallowed. But you should understand, Mr.  
15 Deykes, that the Bankruptcy Code does permit, under certain  
16 circumstances, the filing of a late claim.

17 MR. DEYKES: Your Honor, if I may?

18 THE COURT: Yes.

19 MR. DEYKES: I just have one question. I had filed a  
20 supplemental response that basically outlined the facts as we  
21 were discussing with you in terms of the number of requests and  
22 the timing of the requests. The absence of that being in the  
23 original claim, you're saying that is not relevant?

24 THE COURT: It is relevant that it's not in the  
25 original claim.

1 MR. DEYKES: Okay.

2 THE COURT: That's the point I was making. And there  
3 is a separate standard for permitting a late claim or  
4 permitting an amendment to a claim that substantially changes  
5 the claim and it's not -- you know, it's a standard, that can  
6 be met under the right circumstances.

7 MR. DEYKES: Okay.

8 THE COURT: Which includes, among other things,  
9 prejudice to the debtor and other parties. So that will be the  
10 ruling on that claim.

11 MR. DEYKES: Okay. Thank you, Your Honor.

12 THE COURT: Okay.

13 MR. LYONS: Okay. Your Honor, turning to items 9 and  
14 10 on the agenda. It's the sufficiency hearing regarding the  
15 claims of Wilfred D. Leong and the claims of Victoria B. Perez.  
16 Your Honor, these claims have no allegations of fraud, have no  
17 other allegations. They just say they had a claim because on  
18 account of their equity interest. And as Your Honor has done  
19 in previous omnibus hearings, we would see to have that  
20 expunged and will reclassified as equity interest if, in fact,  
21 they do have some stock currently. So we ask Your Honor to  
22 expunge those claims based on the papers we filed.

23 THE COURT: Is anyone here on behalf of Mr. Leong or  
24 Ms. Perez? All right. I will grant this objection. It's very  
25 clear to me from reading their claims as well as their

1 responses that they believe that this was really a proof of  
2 interest and that the debtor was objecting to their proof of  
3 interest. I think just given that fact, given the confusion  
4 that's in their minds, I would like you to either put in the  
5 order or separately notify them that this order does not  
6 deprive them of any stock interest that they may have in the  
7 debtor.

8 MR. LYONS: We will do that, Your Honor.

9 THE COURT: Okay.

10 MR. LYONS: Your Honor, that is the last item on the  
11 agenda. So I have nothing further.

12 THE COURT: Okay. Very well.

13 MR. LYONS: Thank you, Your Honor.

14 THE COURT: Thank you.

15 (Proceedings concluded at 4:07 p.m.)

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1	I N D E X		
2	Page	Line	
3	Sheehan Declaration	43	21
4	<b>Admitted into Evidence</b>		
5			
6	RULINGS		
7	Page	Line	
8	Administrative Claim	38	21
9	<b>Motion Denied</b>		
10	Fourth Omnibus Claims	41	18
11	<b>Motion Denied</b>		
12	Fifth Omnibus Objection	43	6
13	<b>Granted</b>		
14	Sieloff Claim Disallowed	58	20
15	Mocny Claim Disallowed	58	20
16	Kerscher Claim Disallowed	58	21
17	Deykes Claim Disallowed	65	5
18	Objection to Leong Claim	66	15
19	<b>Granted</b>		
20	Objection to Perez Claim	66	15
21	<b>Granted</b>		
22			
23			
24			
25			

69

1

2 C E R T I F I C A T I O N

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January 15, 2007

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<p><b>A</b></p> <p><b>ability</b> 14:8 33:7 47:20</p> <p><b>able</b> 16:15 27:25 34:12,21 35:12</p> <p><b>above-entitled</b> 69:6</p> <p><b>ABR</b> 19:23</p> <p><b>absence</b> 65:22</p> <p><b>Accardi</b> 4:24 69:4 69:13</p> <p><b>accept</b> 65:9</p> <p><b>acceptable</b> 9:19</p> <p><b>Acceptances</b> 3:16</p> <p><b>accorded</b> 25:11</p> <p><b>account</b> 55:4 59:10 66:18</p> <p><b>accurate</b> 57:11</p> <p><b>accurately</b> 52:9</p> <p><b>acknowledged</b> 17:18 17:20 47:6</p> <p><b>acquired</b> 55:7</p> <p><b>acquisition</b> 57:1</p> <p><b>acronym</b> 48:21</p> <p><b>actions</b> 63:25 64:3</p> <p><b>actual</b> 48:20</p> <p><b>add</b> 25:3 36:14 62:22</p> <p><b>added</b> 41:6,12</p> <p><b>addition</b> 47:15 55:8 56:22 58:19</p> <p><b>address</b> 14:11 16:19 21:22 25:4 26:6 27:14</p> <p><b>addressed</b> 15:14 21:17 22:1 25:5 28:14 29:2</p> <p><b>addressing</b> 24:23</p> <p><b>adjective</b> 34:16</p> <p><b>adjourn</b> 40:12,16,18 44:17</p> <p><b>adjourned</b> 42:20 47:7,8</p> <p><b>adjourns</b> 47:2</p> <p><b>adjudicate</b> 14:8 29:19</p> <p><b>adjudicated</b> 27:21</p>	<p><b>adjudication</b> 19:22 20:3 25:6 26:23 29:14 50:14</p> <p><b>administration</b> 25:21,22 31:13 35:4</p> <p><b>administrative</b> 2:23 11:19 12:8,17,21 26:15,17 27:1 32:21 38:21 68:8</p> <p><b>administrator</b> 56:12 56:15</p> <p><b>admission</b> 28:5 48:11</p> <p><b>admitted</b> 43:23,24 68:4</p> <p><b>adopted</b> 17:16 52:24</p> <p><b>adversary</b> 44:7</p> <p><b>advisory</b> 26:13</p> <p><b>affect</b> 11:5 27:6 34:2 47:19</p> <p><b>afresh</b> 22:22</p> <p><b>afternoon</b> 8:4 11:1,2 11:24 12:1,4 45:9</p> <p><b>agenda</b> 8:8,8,10,13 10:5 11:3 24:1 40:1 41:25 44:5 45:16 50:25 54:12 54:19 60:1 66:14 67:11</p> <p><b>Agent</b> 3:24</p> <p><b>ago</b> 64:17</p> <p><b>agree</b> 24:22 34:25 34:25 36:18 53:15</p> <p><b>agreed</b> 10:9 11:15 40:12,16 44:16 46:16,25</p> <p><b>agreement</b> 14:15 40:18 46:22 64:15 64:22 65:4,11</p> <p><b>agreements</b> 21:7</p> <p><b>AIP</b> 8:20 9:6,8</p> <p><b>AIPs</b> 8:18</p> <p><b>air</b> 16:14 18:9,9 48:15,15</p> <p><b>ALBERT</b> 5:9</p>	<p><b>allegation</b> 58:10 53:2,7 55:9,9 66:16,17</p> <p><b>allege</b> 12:10 33:12 56:22,25 58:6,23 59:8</p> <p><b>alleged</b> 55:10 56:18 58:12,16,25</p> <p><b>allegedly</b> 65:11</p> <p><b>alleges</b> 48:16 53:18 58:16</p> <p><b>Allegheny</b> 52:11</p> <p><b>alleging</b> 52:6 58:19</p> <p><b>allocate</b> 32:8</p> <p><b>allow</b> 12:7,8 25:17 29:19,21</p> <p><b>allowance</b> 2:23 19:13</p> <p><b>allowing</b> 43:1,2</p> <p><b>allows</b> 46:6</p> <p><b>ALSTON</b> 5:12</p> <p><b>alter</b> 60:16</p> <p><b>alternative</b> 38:2</p> <p><b>amended</b> 3:7,24 40:3,7,8 43:9</p> <p><b>amendment</b> 66:4</p> <p><b>Americas</b> 7:4</p> <p><b>amount</b> 12:20 29:20 42:25,25 43:2,6 44:15 52:16 60:4</p> <p><b>amounts</b> 42:8</p> <p><b>ancillary</b> 24:7</p> <p><b>and/or</b> 2:19 16:11 37:24</p> <p><b>annual</b> 8:13</p> <p><b>answer</b> 14:1 44:11</p> <p><b>anticipate</b> 44:12</p> <p><b>anyway</b> 26:12 36:9 48:1</p> <p><b>apart</b> 36:10</p> <p><b>apparently</b> 51:15</p> <p><b>appeal</b> 18:2 30:17 54:4</p> <p><b>appeals</b> 29:21 33:22</p> <p><b>appearing</b> 46:25</p>	<p><b>57:24</b></p> <p><b>applicable</b> 52:4</p> <p><b>application</b> 2:22 11:20 47:10</p> <p><b>applied</b> 11:13 55:17 62:14 64:12</p> <p><b>applies</b> 52:22</p> <p><b>apply</b> 18:5 44:15 62:11</p> <p><b>appointment</b> 37:23</p> <p><b>appreciate</b> 33:9 36:5 36:8</p> <p><b>approach</b> 26:2</p> <p><b>appropriate</b> 8:25 16:25 17:8 21:17 21:18,23 22:25 28:1,20</p> <p><b>approval</b> 23:9</p> <p><b>approve</b> 41:20 43:8</p> <p><b>approved</b> 8:18 9:17 19:24 20:3 21:7 51:10 69:4</p> <p><b>approving</b> 8:16 61:1</p> <p><b>approximately</b> 40:5</p> <p><b>April</b> 11:8</p> <p><b>arcane</b> 15:8</p> <p><b>areas</b> 38:16</p> <p><b>arguably</b> 53:13</p> <p><b>argue</b> 20:4 28:4 33:17 54:23</p> <p><b>argument</b> 24:4 33:14 49:3 60:20</p> <p><b>arises</b> 13:22</p> <p><b>Arps</b> 5:2 8:5</p> <p><b>arrangements</b> 10:17</p> <p><b>arrived</b> 8:22</p> <p><b>art</b> 16:13 18:17</p> <p><b>articulate</b> 13:8 27:25 28:8 60:9</p> <p><b>articulated</b> 61:5</p> <p><b>aside</b> 32:22 37:5</p> <p><b>asked</b> 58:18</p> <p><b>asking</b> 26:16 35:15 35:21 36:2 51:9</p> <p><b>aspect</b> 16:20 17:3 18:13 19:15</p>
--	---	---	--

<b>aspects</b> 19:3 22:15 27:5 45:7,8 <b>assert</b> 47:20 53:13 57:16 <b>asserted</b> 12:14 41:14 41:15 42:14 44:11 47:21 57:25 59:18 <b>asserting</b> 40:5 42:18 <b>assertion</b> 15:22 <b>asserts</b> 51:1 56:3 <b>asset</b> 19:2 30:4 <b>assets</b> 18:21 <b>associated</b> 63:24 <b>assume</b> 10:12 38:6 <b>assuming</b> 9:16,23 20:19 25:13 53:2 53:23 <b>assumption</b> 53:4,5,6 63:10 <b>Atlanta</b> 5:15 <b>attach</b> 63:1 <b>attached</b> 17:18 62:23 <b>attachment</b> 63:22 <b>attachments</b> 53:12 63:18 <b>attempt</b> 53:13 <b>attempting</b> 21:25 <b>attention</b> 35:3 60:7 <b>Attorneys</b> 5:3,13 6:2 7:2 <b>attributable</b> 26:24 <b>atypical</b> 15:25 21:15 <b>audit</b> 60:12 64:1 <b>authority</b> 48:12 <b>Authorizing</b> 2:2,5 2:10,13 <b>Auto</b> 49:3 <b>automatic</b> 2:19 3:1 11:5,22 12:6 15:16 23:6 28:7 29:18 <b>Automotive</b> 23:22 23:22 24:16,17,25 25:1,19,19 41:14 48:23 <b>available</b> 27:20 30:8	<b>Avenue</b> 7:4,10 <b>avoid</b> 24:4,10 54:3 <b>awarded</b> 27:19 <b>aware</b> 20:7 21:5,5 36:12 38:16 60:24 60:24	33:15,16 40:6 41:1 42:12 46:12 48:18 49:6 50:25 55:15 55:16,20,23 56:6 57:3,24 61:4 62:24 67:1 <b>believes</b> 11:7 <b>Benz</b> 41:6 <b>Berger</b> 6:20 10:24 10:25 11:2,2 44:6 44:19 <b>Berger's</b> 44:5 <b>best</b> 33:22 <b>better</b> 35:17 <b>beyond</b> 30:17,17 <b>bifurcated</b> 15:4 <b>big</b> 28:6 30:2 <b>biggest</b> 31:10,23 <b>billion</b> 31:19 34:2,17 35:5,20 50:8 <b>billions</b> 32:7 <b>binding</b> 19:17 <b>BIRD</b> 5:12 <b>bit</b> 23:12 62:9 <b>black</b> 41:22 <b>black-line</b> 41:18 43:10 <b>books</b> 3:12 23:21 42:5,9 43:1,2 <b>borne</b> 53:6 <b>Bosch</b> 33:5 45:22,23 46:18 <b>bother</b> 28:16 <b>bound</b> 63:15 <b>Bowling</b> 1:15 <b>Brands</b> 16:2 <b>breach</b> 13:2 56:3 58:19 <b>breached</b> 59:9 60:25 63:3 64:25 65:11 <b>breakable</b> 18:8 <b>brief</b> 29:9 44:25 <b>briefly</b> 46:4 <b>bring</b> 31:24 60:6 <b>bringing</b> 12:24 38:17	<b>broad</b> 6:11 12:23 <b>Brown</b> 12:19 <b>bucket</b> 34:18 35:5 <b>Buick</b> 51:6,13 <b>burden</b> 30:5 52:6 <b>business</b> 8:23 14:16 38:7 <b>Butler</b> 5:7 8:4,5,12 9:3,8,11,23 10:2,5 10:15,19,24 11:18 30:12 31:3 32:6,12 32:23 33:3,9,13 34:4,12 36:12,18 36:23 37:2,22 38:2 38:21 39:14,19,23 39:25 41:1,3,24 43:4,7,12 44:4,20 45:2 <b>Butler's</b> 21:10 <b>buying</b> 58:1,2
<b>C</b>			
<b>C</b> 5:1 8:1 69:2,2 <b>Cadence</b> 2:22 3:1 5:13 11:19 12:3,4 12:24 14:7 15:20 17:19 21:5,12 23:8 23:10 24:2 26:23 29:1,1,2,4,24 30:3 30:6,25 31:9,25 32:15,16 33:1,6 36:3,16 45:22 46:20 47:15,17,17 47:20,22 48:5,15 49:1 <b>Cadence's</b> 29:7 <b>calculable</b> 27:19 <b>calculated</b> 26:24 <b>calculates</b> 16:6 <b>calculation</b> 44:15 <b>calendar</b> 9:16 10:3 <b>call</b> 13:2 18:11 23:20 28:18 57:25 <b>called</b> 23:13 <b>Campbell</b> 23:2,4 <b>candidly</b> 31:11			

<b>Capital</b> 43:18	<b>characteristic</b> 19:1	61:3,4,6,11,12	<b>clear</b> 15:1 61:10
<b>careful</b> 61:21	<b>characteristics</b> 25:25	63:1,5,7,22,23	66:25
<b>carried</b> 45:19	<b>characterization</b> 34:16	64:7,13,18,19 65:1	<b>clearance</b> 60:10,16
<b>carve</b> 32:17 35:9	<b>chart</b> 50:11	65:2,2,5,6,8,14,16	60:18 65:12
<b>carved</b> 22:16	<b>chose</b> 30:25 35:9	65:23,25 66:3,4,5	<b>clearest</b> 57:6
<b>carve-out</b> 22:13	<b>Cir</b> 52:12	66:10,17 68:8,14	<b>clearly</b> 25:2 31:7
23:7	<b>circuit</b> 13:18 14:1	68:15,16,17,18,20	<b>clerk</b> 23:11
<b>carving</b> 22:3	18:3 23:3	<b>claimant</b> 46:6 51:2,5	<b>clients</b> 37:20
<b>case</b> 1:4 9:14 11:11	<b>circulated</b> 8:8	51:14 52:5	<b>close</b> 57:24
12:18,20 13:15,17	<b>circumstance</b> 17:8	<b>claimants</b> 33:1	<b>closed</b> 51:13
13:18 16:16,21,21	<b>circumstances</b> 8:21	55:25	<b>closing</b> 51:6
17:2,9,11 19:4	64:24 65:16 66:6	<b>claimant's</b> 51:7,12	<b>Coburn</b> 31:5
20:6,20 21:1 23:2	<b>cite</b> 17:8 52:4	<b>claims</b> 2:6,15 3:7,11	<b>Code</b> 65:15
23:4 25:22 26:19	<b>cited</b> 23:2	3:11,23,23,24,24	<b>cognizable</b> 64:19
27:1 28:18 29:6,11	<b>cites</b> 52:11	4:1,3,5,7,9,11,13	<b>Cohen</b> 17:11,16,23
29:22 30:1,8,19	<b>citing</b> 26:18	4:15,17 10:6 13:2	22:17,20 31:15
33:21,22 34:7 36:1	<b>City</b> 51:6,13	13:11 17:19,21	<b>Cohen's</b> 25:4
37:10 45:6 48:8	<b>Civil</b> 55:17	19:13,13 20:10	<b>Cohn's</b> 14:14
53:8 65:6	<b>claim</b> 2:24 11:20	21:14 22:2,13,14	<b>colleagues</b> 35:18
<b>cases</b> 17:6,9 21:15	12:8,17 13:10,12	22:21 23:8,10 24:1	<b>colloquy</b> 25:3
21:23 52:19	13:16,19,21,22,25	24:24 25:22 28:21	<b>Colorado</b> 41:16
<b>cash</b> 27:20	14:2,3,4,8 15:22	28:22,25,25 29:2	<b>come</b> 10:10 31:20
<b>categories</b> 42:3	16:2,22 18:7,23	30:24,25 31:7,9,13	33:24 34:1,19
<b>causal</b> 58:15	20:2,15,17 21:3	31:16,18,20 32:3,6	35:12,16 48:5
<b>cause</b> 23:5 35:3 44:1	22:6,8,11 24:9,12	32:7,8,10,11,13,14	61:19 64:18
<b>caused</b> 36:10	24:20 25:10,11	32:15 33:1,11,17	<b>comes</b> 9:13 18:9
<b>causing</b> 58:8	26:15,17,18 27:1	34:6,14,15,20 35:4	27:9 58:11
<b>cede</b> 11:23	27:25 28:1,11,13	35:6,7 36:6 40:1,3	<b>coming</b> 9:9 32:16
<b>Center</b> 55:19	29:8,25 31:9,14	40:4,6,8,10,13,20	63:13
<b>Ceramics</b> 2:18 11:4	32:15,21 33:15	40:21,25 41:7,13	<b>commenced</b> 28:11
<b>certain</b> 2:7,16 3:6,10	34:8 36:8 38:21	41:13,21,25 42:2,3	44:7
3:22 40:13 54:17	39:6 40:17,19	42:3,6,7,17,17,20	<b>comment</b> 8:13
55:5 56:25 65:15	41:15,16 42:14,19	45:11,13,20 46:5	<b>comments</b> 26:10
<b>certainly</b> 14:22	42:24,25 44:24	46:15 47:1,2,5,8	<b>committed</b> 55:11
15:23 27:10 28:9	45:8 46:7 47:6,21	47:22 49:2,17,18	58:13
29:2 35:14 36:21	49:5,6,6 50:2,2,23	49:19 50:8,12,15	<b>committee</b> 2:5,10,14
36:21 39:10 55:13	51:3,8,12,24 52:2	50:17,22,25 51:1	6:2 10:8,17 19:11
56:2 60:9 62:24	52:9,14,17,21,23	52:20 53:1,22	43:17
<b>certify</b> 69:4	53:2,7,8,9,11,14	<b>committees</b> 8:24 9:4	
<b>challenge</b> 15:25	53:14,16,19,20,22	55:13,20,22 56:17	<b>committee's</b> 2:12
<b>chance</b> 8:20 9:4 10:8	54:8 55:10,18 56:3	56:24 57:9 58:5	10:6,21
<b>change</b> 14:16 16:13	56:22 57:10,15,20	59:4 66:15,15,16	<b>common</b> 54:14,16
16:13 49:5	57:23 58:19,20	66:22,25 68:10	54:18,18 55:4,6
<b>changes</b> 49:8 66:4	59:1,5,18 60:4	<b>clarification</b> 47:25	<b>companion</b> 27:24
<b>Chapter</b> 21:15		<b>clarifications</b> 49:8	<b>company</b> 31:4,10
30:18		<b>clarified</b> 47:9	32:21 35:4 57:19

58:11,12 60:11,13 60:17,18,19,21 62:9,12,14,19 <b>company's</b> 30:19 60:14 <b>compensation</b> 2:3 9:18 <b>competent</b> 30:7 <b>complaint</b> 3:18 12:10 15:18 <b>complete</b> 25:7 <b>completed</b> 33:21 <b>completely</b> 31:13 35:9 <b>completes</b> 44:20 <b>complex</b> 33:23 <b>complexity</b> 22:5 <b>compliance</b> 63:12 <b>complicated</b> 17:21 <b>complying</b> 65:11 <b>comprehend</b> 16:17 <b>compressed</b> 19:22 <b>Computer</b> 3:19 44:8 <b>concede</b> 53:3 <b>conceded</b> 33:10 35:6 60:5 <b>conceivably</b> 15:17 20:21 58:18 59:18 <b>concern</b> 25:17 <b>concerns</b> 20:11 <b>concession</b> 39:1 <b>conclude</b> 57:19 59:19 <b>concluded</b> 8:19,25 59:17 67:15 <b>conclusion</b> 30:1 <b>conclusory</b> 59:9,12 <b>condition</b> 37:17 <b>conduct</b> 14:12 <b>conducted</b> 33:19 <b>conference</b> 37:25 44:6 <b>confers</b> 50:17 <b>confirm</b> 11:12 48:11 48:17 <b>confirmation</b> 12:16	21:10 27:22 28:1 34:11 <b>confirmatory</b> 49:8 <b>confirmed</b> 48:13 <b>conflicts</b> 11:3 <b>confusion</b> 67:3 <b>conjoined</b> 12:9 <b>Conley</b> 53:10 <b>connection</b> 13:3 30:13 47:22,24 56:4,11,25 57:17 58:1,8,13 <b>Connolly</b> 5:17 11:24 12:2,3 14:22 15:4 15:14,20 16:9 17:17 20:23 23:19 24:16,22 25:24 26:5,9,20 27:8,18 28:3 30:13 33:9 35:5 36:13,25 37:3 37:7,12,19 38:13 38:25 39:8,12,18 39:18,20 48:5,6,18 48:25 49:1,13,23 49:25 <b>consent</b> 44:16 <b>consequence</b> 13:9 15:15 <b>consequences</b> 19:18 <b>consider</b> 43:24 53:5 65:4 <b>considering</b> 53:6,19 <b>consistent</b> 52:13,19 60:14 <b>Consolidated</b> 3:23 <b>constitute</b> 52:16 <b>construction</b> 16:4 18:7 <b>construed</b> 17:19,20 51:11 <b>construing</b> 12:21 <b>consult</b> 10:8 <b>consumed</b> 31:16 <b>contained</b> 47:19 <b>contemplate</b> 15:11 <b>contemplated</b> 19:23	<b>contend</b> 30:5 37:16 <b>content</b> 47:14 <b>contentions</b> 17:25 <b>contested</b> 52:23,23 <b>context</b> 8:21 13:20 13:22 19:7 21:3,15 21:18 23:1 24:12 27:14,15 30:20 36:2,17 52:25 <b>continue</b> 15:22 <b>continuing</b> 14:14 15:21 30:3 <b>contract</b> 13:2 18:23 62:23,23,24 63:1,1 63:4 <b>contractual</b> 62:16 62:19 63:2 <b>contrast</b> 18:22 <b>conversation</b> 21:24 37:21 38:17 <b>conversations</b> 28:10 <b>conveyed</b> 58:1 <b>Corp</b> 7:3 23:22 24:16,25 25:19 <b>Corporation</b> 1:8 2:7 2:15,18 8:3 11:5 41:16 45:5 47:3 49:4,4 <b>Corporation's</b> 3:18 <b>correct</b> 41:1 43:7 54:9 59:15 61:18 62:20,20 69:5 <b>corrected</b> 69:7 <b>correctly</b> 52:4 <b>correlate</b> 12:8 <b>correlative</b> 22:13 <b>counsel</b> 11:3,14,21 11:23,24 21:4 25:3 30:7 31:5 48:12 53:17 <b>count</b> 19:18 <b>counterclaim</b> 16:3 <b>couple</b> 19:3,18 22:14 26:6 28:8 33:5 38:10 45:15 <b>course</b> 18:21 53:3	63:11 <b>court</b> 1:2,14 8:2,11 9:2,6,9,10,22 10:1 10:4,12,18,23 11:1 11:17 12:1 14:10 14:18,25 15:1,10 15:17 16:1,8,25 17:15 18:12 19:8 19:14,24 20:3,11 20:16 21:7,22 22:18 23:17 24:8 24:11,13,14,17 25:1,4,6,23 26:1,4 26:6,7,11 27:4,15 27:17 28:2,8,16 29:5,10,12,16,19 29:23 30:9,22 31:1 32:3,10,16,18,22 32:25 33:7,11 34:2 34:10 35:1,13,25 36:5,20,25 37:5,8 37:17,22 38:1,4,19 38:23 39:4,11,13 39:16,21,22,24 40:24 41:2,18,19 42:24 43:5,8,24 44:18,23 45:4,10 45:17 46:1,10,17 46:23 47:12 48:3,9 48:12,20,24 49:12 49:14,22,24 50:1 50:20 51:23,25 52:24 53:13 54:2 54:10 55:1 56:1,8 56:16 57:2,4,7,12 59:11,14,16 61:7 61:10,24 62:5,11 62:16,21 63:5,7,21 65:18,24 66:2,8,12 66:23 67:9,12,14 69:4,7 <b>courts</b> 17:4 <b>Court's</b> 27:2 42:12 <b>cover</b> 42:14,17 <b>covered</b> 14:20 26:11 <b>covers</b> 16:14 18:9
--	---	---	--

42:6 48:15,15 <b>created</b> 61:11 <b>creditor</b> 14:3 21:11 55:6 <b>creditors</b> 2:6,14 10:6 13:4 19:17 20:11 43:17 <b>crux</b> 60:19 <b>current</b> 54:14 55:8 <b>currently</b> 50:9,9 58:21 66:21 <b>cutoff</b> 16:16 <b>CVs</b> 47:4	<b>D</b> <b>D</b> 1:22 4:15 8:1 66:15 68:1 <b>damage</b> 13:16 25:9 29:19 <b>damages</b> 12:12,14 12:15 14:12,19,21 15:10,11,18,19,22 16:6,7,10,17 25:9 26:23 27:19 28:14 29:15 33:19 40:5 40:21 42:15,18 58:8,16 <b>DAS</b> 48:13,20 49:5 <b>Data</b> 7:2 47:3 <b>date</b> 11:9,10 14:13 14:14,23,24 15:12 15:12,18 16:11,11 16:16 18:23 20:6 20:13 27:23 40:19 43:23 44:2,17 65:1 69:11 <b>day</b> 8:3 13:16,19 15:21 32:19 34:14 <b>days</b> 17:14 36:19 37:11,15 38:10,11 45:15 <b>dba</b> 3:19 <b>de</b> 47:4 <b>deadline</b> 40:14,15 <b>deal</b> 17:5 24:24 25:6 25:18 27:2,3 28:6	30:2,6,10,24 31:15 38:6 39:3 45:6 49:10 54:3 <b>dealing</b> 22:21 31:1 31:22 32:4,7 40:20 <b>deals</b> 23:12 31:4 40:3 <b>dealt</b> 39:7 43:13 <b>debt</b> 59:13 <b>debtor</b> 1:10 5:3 13:23,23 20:2,14 20:16 28:10,22 44:1,9 48:14 52:7 53:9 56:12 66:9 67:2,7 <b>debtors</b> 2:2,6,8,14 2:16 3:3,5,9,12,15 3:21 8:6 17:18 19:16 20:21 22:2 23:8,17,23 24:18 24:25 25:12,15,18 28:4 30:7,7 36:4 36:17 37:11 39:9 40:19 42:13 44:7 44:16 45:10 46:13 46:24 47:6,21 48:13,18 51:21 52:4,7 53:3,15,17 53:18,23 55:11 56:11 59:2,9 <b>debtor's</b> 21:4 22:3 27:12 38:7 40:12 41:11 42:1,5,8 43:1,2,15 50:22 53:14 61:4 <b>decade</b> 30:20 <b>December</b> 52:10 <b>decide</b> 24:11 32:20 32:20 <b>decided</b> 30:18 <b>deciding</b> 31:12 <b>decision</b> 27:6,6 <b>declaration</b> 43:21 43:23 68:3 <b>decline</b> 63:24 <b>declined</b> 51:15 64:7	<b>depends</b> 65:7 <b>deprive</b> 67:6 <b>depth</b> 16:25 <b>deputy</b> 31:5 <b>derived</b> 9:3 <b>describe</b> 58:25 <b>described</b> 65:3,3 <b>desire</b> 27:12 <b>detailed</b> 17:17 <b>determination</b> 25:8 34:8 53:3 54:4 <b>determine</b> 44:13 53:8 55:21 63:2 <b>determined</b> 12:12 <b>detriment</b> 56:21 <b>Detroit</b> 12:7,11,13 14:11 25:6 30:8 32:21 35:15 <b>Deykes</b> 4:11 7:15 54:22 60:1,5,8,10 60:12,21,24 61:5,7 61:9,13 62:1,7,13 62:15,20 63:6,10 65:15,17,19 66:1,7 66:11 68:17 <b>Deykes's</b> 60:2 <b>different</b> 13:9 22:15 26:18 34:21 55:5 60:7 64:17 65:13 <b>differs</b> 42:25 43:6 <b>digital</b> 69:8 <b>dilatory</b> 29:4 <b>direction</b> 63:14 <b>directive</b> 63:13 <b>disagree</b> 21:8 <b>disallow</b> 40:4 <b>disallowed</b> 43:5 64:8 65:14 68:14,15,16 68:17 <b>disallowing</b> 59:4 <b>discharge</b> 13:22,24 14:5 <b>disclosure</b> 9:20 <b>disclosures</b> 58:14 <b>discovery</b> 33:18,20 44:12
--	--	--	--

<b>discussing</b> 65:21	<b>drive</b> 13:9	<b>61:21,22</b>	<b>evidence</b> 25:2 29:20
<b>discussions</b> 21:6	<b>drops</b> 35:13	<b>employee</b> 2:2 51:17	43:19,22,23 52:16
25:13	<b>DUANE</b> 6:10	58:1 64:1	52:21 68:4
<b>dismiss</b> 51:10 53:23	<b>due</b> 51:5 63:24	<b>employees</b> 54:15	<b>evidentiary</b> 43:20
57:20 59:19	<b>duplicate</b> 3:7,24	62:12 63:18 64:3	52:14
<b>dispute</b> 12:19 13:15	40:3,8 46:7,14	<b>employment</b> 53:18	<b>ex</b> 2:10 10:21
15:23,24 22:19	<b>duplicative</b> 3:23	60:11 61:4,15,15	<b>exact</b> 28:24
38:3	23:13,14 40:6 48:8	61:19,20 64:9	<b>exactly</b> 20:23
<b>distinct</b> 18:11	<b>duty</b> 56:4 58:20 59:9	<b>encourage</b> 10:1	<b>example</b> 13:19
<b>distinguish</b> 13:1	59:18 60:20,25	36:22	16:13 18:10 22:23
<b>distinguishes</b> 16:20	62:18 63:2 64:16	<b>energy</b> 31:20	53:10
<b>distinguishing</b> 19:1	64:21,25,25	<b>engage</b> 58:22	<b>exceeded</b> 19:20
25:25	<b>DVM</b> 40:17	<b>enter</b> 29:20	<b>exclude</b> 18:16
<b>distribution</b> 18:25	<b>dynamic</b> 23:5	<b>entered</b> 23:23	<b>excluding</b> 54:22
21:13	<b>dynamics</b> 28:18	<b>enthusiasm</b> 29:8	<b>exclusive</b> 3:15 18:15
<b>distributions</b> 20:20	<b>E</b>	<b>entities</b> 23:23	<b>exclusivity</b> 43:15
47:24	<b>E</b> 1:21,21 4:1 5:1,1	<b>entitled</b> 51:2	44:3
<b>district</b> 1:3 15:2	8:1,1 68:1 69:2	<b>entitlement</b> 35:10	<b>excuse</b> 25:9
17:4 22:22,23 24:8	<b>earlier</b> 11:11 20:14	55:10	<b>excused</b> 49:23
32:18 36:21	22:7 23:11 28:17	<b>entry</b> 41:8	<b>executed</b> 45:24
<b>divert</b> 30:24 35:3,3	<b>early</b> 19:9	<b>equity</b> 2:11,12 3:23	52:15
<b>docket</b> 8:14 9:13	<b>economy</b> 23:4	6:3 10:20 63:23	<b>executing</b> 64:5
10:7 11:20 40:2	<b>EDS</b> 45:22 46:20,21	66:18,20	<b>execution</b> 20:2
41:10 42:1 43:16	46:24 47:3,4,11,15	<b>Eric</b> 45:11	<b>executive</b> 9:18
43:18	<b>EDS's</b> 47:6	<b>error</b> 46:25	<b>Exercise</b> 2:19
<b>docketed</b> 42:12	<b>effect</b> 16:15 19:9	<b>ESQ</b> 5:7,8,9,10,17	<b>exist</b> 14:6 19:2
<b>docketing</b> 41:13	38:20 50:6 52:14	6:7,8,14,20 7:7,13	<b>expect</b> 21:24
<b>document</b> 63:9,20	<b>effective</b> 27:23	7:17	<b>expedited</b> 34:19
<b>documentation</b> 3:11	<b>efficiency</b> 22:18	<b>essence</b> 13:17 14:9	<b>expense</b> 2:24 11:20
42:4,7	<b>efficient</b> 50:19	18:15 23:23 46:8	12:8,17,22 27:1
<b>documents</b> 44:13	<b>Eight</b> 42:10	61:1	<b>experience</b> 3:19
63:17	<b>either</b> 20:19 54:14	<b>essentially</b> 18:7 25:3	21:16 44:8
<b>doing</b> 34:19 37:6	55:8 56:23 67:4	27:23 31:14	<b>expertise</b> 38:16
44:2	<b>electronic</b> 7:2 41:17	<b>establish</b> 58:15	<b>expire</b> 18:21
<b>dollar</b> 21:3 34:18	47:3 69:5	<b>established</b> 27:1	<b>expiry</b> 30:4
35:5,20 42:8 51:2	<b>electronics</b> 44:9	<b>estate</b> 3:19 30:24	<b>explain</b> 30:14 46:4
<b>dollars</b> 31:19 32:7	<b>elements</b> 9:17	46:7,8,9	<b>explained</b> 47:14
40:6,22 42:15,18	<b>eleven</b> 8:9	<b>Esther</b> 4:24 69:4,13	<b>exploit</b> 18:16
50:8 60:4,6	<b>eliminated</b> 40:9	<b>estimate</b> 20:16 33:8	<b>exploiting</b> 18:17
<b>double</b> 11:7	<b>embarrassed</b> 21:2	<b>estimated</b> 34:24	<b>expressed</b> 37:19
<b>Douglas</b> 4:11 7:15	<b>embodied</b> 18:18	<b>estimation</b> 19:14	<b>expressly</b> 41:11
<b>Downey</b> 4:13 54:22	<b>Emerett's</b> 40:18	20:21 21:16 22:2	<b>expunge</b> 24:24 40:4
55:3 56:7 59:8,8	<b>emergence</b> 9:13	22:14 27:16 39:3	51:23 66:22
59:16,20,24	<b>Emmanuel</b> 30:8	<b>etcetera</b> 14:4	<b>expunged</b> 46:7 50:7
<b>drag</b> 29:13	<b>employed</b> 51:12	<b>event</b> 22:5,8 23:17	66:20
<b>Drain</b> 1:22 11:25		24:7	<b>expungement</b> 46:14

<b>expunging</b> 46:5 <b>extended</b> 44:3,3 <b>Extending</b> 3:14 <b>extension</b> 43:15 <b>extent</b> 12:11,15 14:2 26:21 27:10 36:9 <b>e-mail</b> 63:18 <b>E-mails</b> 60:15	<b>feel</b> 50:3 <b>fiduciary</b> 56:4,11,13 58:19,20,23 59:14 59:15,18,21,22 <b>field</b> 37:2,3 <b>fifteen</b> 20:7 42:14 <b>fifth</b> 3:9 41:25 42:17 43:8 68:12 <b>fighting</b> 29:11 <b>figure</b> 31:18 35:18 <b>file</b> 2:11 3:15 14:3,4 28:20 31:11 39:3 40:14,15 65:2,5,7 65:7 <b>filed</b> 8:7 10:7 12:5 13:4 15:18 16:19 20:6,8,14,25 21:3 28:7,10,23 29:1 40:11 41:10 42:1 42:10,20 43:15,17 45:22 50:23,24 51:20,22 52:8,15 52:17 53:13 54:14 55:4 60:2 65:19 66:22 <b>files</b> 35:12 <b>filings</b> 53:15 <b>final</b> 34:7 <b>finally</b> 19:6 48:4 <b>financial</b> 58:14 <b>find</b> 43:25 55:25 <b>finder</b> 12:13 <b>findings</b> 24:18 <b>fine</b> 9:10 10:1,18 11:17 22:10 38:13 38:19 44:18 45:17 49:22 <b>finer</b> 16:15 <b>fingertips</b> 28:24 <b>finish</b> 27:13 <b>first</b> 8:12,20 9:5,9 11:19 13:13 16:10 28:11,25 29:14,15	30:13,22 42:4 44:6 44:24 45:5,18,23 46:24 48:10 50:21 56:17 <b>fit</b> 12:5 <b>five</b> 29:6 30:21 37:20 48:5 50:7 54:24 <b>fixed</b> 18:23 <b>Flom</b> 5:2 8:6 <b>floodgates</b> 20:5 <b>focus</b> 31:19 36:9 37:11 56:16 <b>focused</b> 31:22 36:6 <b>focusing</b> 15:5 32:3 37:9 <b>follow</b> 10:11,16,21 <b>followed</b> 20:25 21:11 <b>follows</b> 64:18 <b>foregoing</b> 69:5 <b>form</b> 42:23 52:19 58:13 <b>formal</b> 42:9,19 44:12 <b>former</b> 2:7,16 54:14 <b>forth</b> 41:21 43:9 44:1 52:9 53:7,15 55:2,14 56:22 57:19 59:20 64:19 65:8,12 <b>forum</b> 29:7 <b>forward</b> 9:16,24 14:7 22:5 40:25 <b>found</b> 8:14,15 19:7 40:2 <b>four</b> 5:4 12:25 29:6 30:21 31:24 40:13 <b>fourteen</b> 31:11 32:1 33:24 35:14 <b>fourteenth</b> 8:8 <b>fourth</b> 3:5 40:1 41:20 68:10 <b>frame</b> 30:18 <b>framed</b> 28:21 <b>framework</b> 9:16,18	9:24 10:3,11 21:6 <b>FRANK</b> 6:1 <b>FRANKEL</b> 7:1 <b>frankly</b> 47:25 51:22 <b>fraud</b> 55:10,15,22 56:17,18,25 57:16 57:18 58:7,13,16 58:19,22,25 59:8 66:16 <b>free</b> 50:3 56:2 60:16 <b>FRIED</b> 6:1 <b>front</b> 26:15 <b>full</b> 21:13,21 <b>function</b> 63:11 <b>Fund</b> 41:6 <b>Furakawa</b> 11:10 <b>further</b> 2:12 25:20 58:3 67:11 <b>future</b> 8:18 40:10,19 47:8 <b>F.2d</b> 23:3
<b>G</b>			
<b>G</b> 7:17 8:1 45:11 <b>general</b> 2:7,15 19:25 23:24 25:11 31:5 34:15 46:15 51:4,7 55:9 57:8 <b>generally</b> 18:5 19:5 26:2 36:7 59:21 62:17,18 <b>gentleman</b> 61:18 <b>Georgia</b> 5:15 <b>getting</b> 21:21 24:10 44:13 <b>Gibson</b> 53:10 <b>give</b> 21:3 59:1 65:12 <b>given</b> 17:13 21:19 22:6 28:16,17 30:21 36:7,7 51:14 51:18 62:1 65:5 67:3,3 <b>gives</b> 13:15 46:19 <b>give-and-take</b> 20:11 <b>giving</b> 50:6 <b>global</b> 21:1			

<b>GM</b> 10:6 28:19 51:12 <b>go</b> 14:9,23 18:3 19:21 20:19 22:4 25:13,14 30:16 31:14 32:1,17 33:21 35:14 37:16 39:18,19 45:16 49:11 50:1,3 54:19 55:13,24 60:15 <b>goal</b> 39:10 <b>goes</b> 52:3 64:8 <b>going</b> 10:12,16 13:20 14:6 19:13 19:21 24:19 25:16 28:16 30:15,18,20 30:21 33:21,22 34:12,13,14,19,20 34:23 35:1,2 38:23 39:17 40:24 44:25 44:25 50:6 52:3 54:5 61:1 <b>good</b> 8:4 10:25 11:1 11:2,24 12:1 21:14 37:9,18,24 39:11 45:9 46:3 59:7 <b>goods</b> 44:9 <b>GORDON</b> 7:7 <b>GORMAN</b> 7:13 <b>government</b> 18:16 <b>grant</b> 59:5 66:24 <b>granted</b> 18:15 30:15 68:13,19,21 <b>granting</b> 54:7 <b>greater</b> 25:11 <b>Green</b> 1:15 <b>grounds</b> 51:3 <b>guck</b> 34:4,15 <b>gucks</b> 31:18 <b>guess</b> 15:17 20:24 21:11 27:3 36:5 55:19 56:3 60:19 62:22 63:10 <b>guidelines</b> 20:1	<b>H</b> 6:14 <b>half</b> 8:17,20 9:9 <b>hand</b> 45:24 46:1 49:16,20 64:21 <b>handed</b> 50:11 <b>handle</b> 28:12 <b>handling</b> 28:17 <b>happy</b> 21:12 37:21 50:14 55:24 <b>harm</b> 30:6 <b>HARRIS</b> 6:1 <b>Hazel</b> 40:18 <b>Hazelquist</b> 13:17 <b>headquarters</b> 37:21 <b>heard</b> 11:11 18:12 23:12 24:20 <b>hearing</b> 4:1,3,5,7,9 4:11,13,15,17 8:7 8:8,16 9:1 10:10 15:6 17:16 23:25 29:14 40:12,18,19 42:19 43:14 44:21 44:24 45:8 46:2,6 46:19 47:2,6,7,8 47:10 49:17,20 52:5 66:14 69:8 <b>hearings</b> 17:1 35:7 40:10 45:20 66:19 <b>heated</b> 36:15 <b>heavy</b> 11:14 <b>heightened</b> 58:21 <b>held</b> 55:18 56:10 58:14 <b>help</b> 60:12 <b>helpful</b> 38:4 55:25 <b>Highland</b> 43:18 <b>HOGAN</b> 5:9 <b>holder</b> 14:3 <b>holders</b> 2:11 6:3 40:8 <b>holding</b> 35:7 <b>holdings</b> 57:10 <b>holds</b> 54:4 <b>holidays</b> 11:6 <b>HON</b> 1:22 <b>Honor</b> 8:4,7,12,16	8:19 9:15,17 10:2 10:6,20 11:10,18 12:2,4,18,23 13:11 13:13,20 14:9,22 15:5,24 16:9,22 17:4,11 18:14 19:1 19:4,6 20:8,23 21:8 22:1,7,11,13 23:1,19 24:7 25:10 25:24 26:5,20 27:8 28:3,24 29:9 30:3 30:12 31:17 32:6 33:4,17,25 34:13 35:21 36:12,24 37:3,7 38:25 39:12 39:14,23,25 40:11 40:20 41:17,24,24 43:12,12,22 44:4 44:20 45:2,9,15,18 45:22 46:19,20 47:13 48:10,25 49:2,13,15,16,21 49:23 50:5,7,12,21 50:24 51:9,10,16 51:20,22 53:25 54:11,12 55:2,15 55:20,24,25 56:14 59:7,12,25,25 60:2 60:3,8,19 61:9 62:15,22 63:6 65:17 66:11,13,16 66:18,21 67:8,10 67:13 <b>Honor's</b> 44:16 50:14 54:16 60:7 <b>hope</b> 11:15 25:14 30:18 <b>hopefully</b> 27:4 34:20 <b>Howe</b> 45:11 <b>huge</b> 22:7	<b>identify</b> 59:13 <b>II</b> 3:23 <b>III</b> 3:24 <b>IMAW</b> 40:13 <b>impact</b> 19:12 20:1 <b>impair</b> 47:19 <b>Implement</b> 2:2 <b>implicated</b> 23:1 <b>important</b> 13:8 <b>importantly</b> 58:7 <b>impression</b> 62:15 <b>inability</b> 60:10 <b>inactions</b> 63:25 <b>incentive</b> 8:14 9:13 <b>include</b> 14:19 52:18 <b>included</b> 9:20 46:6 <b>includes</b> 15:12 31:5 66:8 <b>including</b> 28:25 31:21 47:22 48:15 51:3 58:7 59:22 <b>income</b> 51:5 <b>independence</b> 13:21 <b>independently</b> 9:25 <b>indicated</b> 41:17 69:7 <b>indicating</b> 63:10 <b>indication</b> 29:23,24 <b>indiscernible</b> 61:14 <b>individual</b> 41:7 55:25 <b>Industrial</b> 2:18 11:4 <b>infer</b> 29:4 <b>informal</b> 41:5 <b>information</b> 47:3 57:11,25 60:22,23 61:23 63:17 <b>infringe</b> 48:16 <b>infringement</b> 33:12 <b>infringements</b> 12:12 <b>infringes</b> 16:12 <b>infringing</b> 14:12,17 <b>initial</b> 26:9 52:6 55:19 60:3,3 <b>initially</b> 22:2 29:17 <b>initiated</b> 62:2 <b>Innovation</b> 2:22 3:1
	<b>H</b>	<b>I</b>	
		<b>IBEW</b> 40:13 <b>idea</b> 18:18 <b>identification</b> 56:20 <b>identified</b> 60:20,25	

12:3	29:12 31:15 35:17 38:6,9 54:18	Katz 38:15 Kayalyn 5:8 8:5 KECP 8:13,17 9:12 KECPs 8:18	lawsuit 23:18 lawsuit's 24:15 lawyers 31:8 56:19
<b>inquired</b> 64:10	<b>item</b> 9:12 11:22 18:13 45:18 54:19 60:1 67:10	<b>Kerscher</b> 4:9 54:21 55:3 56:4,9 58:17 59:4 68:16	<b>leading</b> 17:2 <b>leads</b> 30:1 64:17
<b>inquiries</b> 64:13	<b>items</b> 54:12 66:13	<b>Kerscher's</b> 59:18 <b>key</b> 2:2 52:17 55:14	<b>lease</b> 30:16 <b>leave</b> 32:22 37:2,5
<b>inquiry</b> 64:14	<b>IUE-CWA</b> 40:14	<b>kitchen</b> 33:14	<b>leaves</b> 60:1
<b>inside</b> 63:17	<b>IUOE</b> 40:13	<b>know</b> 10:13 15:17 16:1,25 17:13	<b>leaving</b> 62:9
<b>insider</b> 63:14	<b>J</b>	18:14 20:25 21:20	<b>left</b> 60:11,17,18,20 61:3,16,24 62:6,8
<b>insiders</b> 64:5	<b>J</b> 6:8	22:6 26:17 29:16	62:14 64:14
<b>instances</b> 56:25	<b>Jack</b> 8:4	31:9,17 32:8,23	<b>legal</b> 52:7 61:3 62:17 63:13 64:10
<b>insufficient</b> 3:11 42:4,7	<b>JACOBSON</b> 6:1	33:4,14,18 34:23	64:12
<b>insurance</b> 35:24	<b>January</b> 1:18 8:7 14:13 47:5 48:16 69:10	36:9,19 37:1 38:1	<b>LEMKIN</b> 6:14
<b>insure</b> 27:24	<b>JASON</b> 6:7	38:5,9 40:10 60:8	<b>length</b> 52:9
<b>intended</b> 48:1	<b>Jersey</b> 6:12	62:17,25 64:23	<b>lengthy</b> 38:8
<b>interact</b> 16:4 17:22	<b>John</b> 5:7,10 8:5 45:9	66:5	<b>Leong</b> 4:15 66:15,23 68:18
<b>interest</b> 13:5 47:24 66:18,20 67:2,3,6	<b>joint</b> 46:11,12	<b>knowledge</b> 18:5 22:3	<b>letter</b> 62:4
<b>interesting</b> 19:7	<b>Jorgenson</b> 4:5 54:20 55:3 57:3,5 59:6	<b>known</b> 36:17	<b>let's</b> 35:14 36:1
<b>interference</b> 25:20	<b>Jorgenson's</b> 57:23	<b>knows</b> 29:12	<b>level</b> 37:2
<b>internal</b> 63:11 64:1 64:2	<b>JOSEPH</b> 6:14	<b>Kraft</b> 45:12	<b>LEVIN</b> 7:1
<b>internally</b> 34:24	<b>JUDE</b> 7:13	<b>KRAMER</b> 7:1	<b>liabilities</b> 42:5,8
<b>introduce</b> 45:14	<b>judge</b> 1:23 10:25 11:25 14:14 15:2,2 17:11,16,23 22:17 22:20,23 23:7	<b>Kyocera</b> 2:18 11:4,7 11:15	<b>liability</b> 15:5,7,24 16:5,10 25:9,19 29:15,18 33:20 46:12,13 52:7
<b>Int'l</b> 52:11	24:22 25:4,9 30:11 31:15 36:13,21 37:19 38:13,14,15 55:18	<b>L</b>	<b>liable</b> 46:9
<b>inventor</b> 18:16	<b>judgment</b> 29:20	<b>L</b> 5:9	<b>license</b> 14:15 18:15
<b>investigation</b> 64:2,4	<b>judgments</b> 29:17	<b>lack</b> 29:8	<b>lift</b> 12:6 23:5 24:11 24:15 25:2 28:7
<b>investigations</b> 55:12	<b>judicial</b> 22:18 23:4	<b>LaFonza</b> 4:1 50:23	29:18 35:13 36:24 37:16
<b>investment</b> 60:16	<b>July</b> 51:6	<b>laid</b> 65:8	<b>lifted</b> 14:11,20 21:9 22:17 26:22 37:13 37:14 38:12
<b>investors</b> 9:19 34:22	<b>juncture</b> 25:15	<b>language</b> 41:7,12 46:6,16,21 47:17	<b>lifting</b> 11:14
<b>invoices</b> 11:8,13	<b>jurisdiction</b> 17:5 18:2 22:24	<b>large</b> 22:18	<b>lifts</b> 14:25
<b>involuntary</b> 51:4	<b>jurisdictionally</b> 22:24	<b>late</b> 19:10 45:6 65:2 65:5,7,16 66:3	<b>light</b> 25:15 28:1 36:1 44:1 53:1 55:21 57:16,23
<b>involved</b> 15:16 31:6 31:6 64:3	<b>K</b>	<b>LATHAM</b> 7:9	<b>limit</b> 47:20
<b>issue</b> 11:10 13:12 15:24 16:19,22 17:2,10 18:18 19:2 19:6,10,10 21:4,16 21:16,22,23,25 22:25 23:13,20,20 24:11,24 25:4,5 27:9 28:4 30:10,19 31:22 32:19 35:20 38:25 48:8 62:13	<b>K</b> 5:10 45:10 <b>Karen</b> 45:12	<b>law</b> 12:18,20 26:16 27:2 60:22	<b>limitation</b> 59:22
<b>issues</b> 15:7 17:5,21 18:6 19:4,5 20:12 21:1 23:7 25:8 27:8 28:20 29:11		<b>laws</b> 12:20,21 18:5 18:14 62:18 63:12 63:14	<b>limited</b> 18:15 19:15

VERITEXT/NEW YORK REPORTING COMPANY

212-267-6868

516-608-2400

34:6 45:7 47:22 <b>line</b> 21:10 50:13 59:16 68:2,7 <b>lined</b> 41:22 <b>liquidate</b> 34:11,21 <b>liquidated</b> 28:13 40:5,21 42:18 <b>liquidating</b> 18:24 <b>Liquidity</b> 41:6 <b>list</b> 33:3 38:5,15 50:12 <b>litigants</b> 22:21 <b>litigate</b> 13:20 30:8 <b>litigated</b> 12:11 <b>litigation</b> 3:2 12:7 13:6 14:19,20 15:8 18:12 19:8 20:19 21:9 24:8 25:17 28:19 29:10,12 30:14,21 32:2,5 33:18,24 35:15 36:3,16 <b>litigations</b> 15:9 <b>litigator</b> 37:9 <b>little</b> 23:12 24:20 45:5 <b>lived</b> 17:11 <b>LLC</b> 3:19 12:3 23:22 24:21 25:1 25:20 41:14 47:4 48:13,23 <b>LLC's</b> 2:22 3:1 <b>LLP</b> 5:2,12 6:1,16 7:1,9 8:6 <b>logically</b> 12:5 <b>long</b> 24:5 30:20 33:23 37:10 <b>longer</b> 14:17 16:12 19:2 20:20 <b>look</b> 8:19,20 9:4 23:2 34:22 36:1 63:5 <b>looked</b> 13:3,5 28:15 33:16 38:14 61:2 <b>looking</b> 11:11 27:11 31:7 51:8 63:21	<b>loss</b> 55:6 57:10 60:5 <b>losses</b> 63:24 <b>lost</b> 14:5 57:9 <b>lot</b> 10:13 20:20 27:5 50:15 60:6 <b>loud</b> 63:22 <b>lunch</b> 45:1 <b>Lyons</b> 5:10 8:5 23:15 37:20 45:9 45:10,18 46:3,11 46:18,24 47:13 48:4,10,22 49:15 50:5,21 53:25 54:9 54:11 55:2 56:6,14 56:24 57:3,5,8 59:7,12,15,25 62:22 66:13 67:8 67:10,13	<b>M</b> <b>magistrate</b> 15:2 17:15 <b>magnitude</b> 29:18 <b>making</b> 39:1 50:15 66:2 <b>management</b> 31:1 36:16 <b>management's</b> 31:3 63:25 64:3 <b>mandatory</b> 17:7 24:6 <b>Manhattan</b> 44:9 <b>manner</b> 17:19 <b>manufactures</b> 16:14 <b>manufacturing</b> 51:15 <b>Marafioti</b> 5:8 8:5 <b>March</b> 15:5,6 64:9 <b>market</b> 9:19 <b>Markman</b> 15:7 17:17 29:13,14 <b>match</b> 42:8 <b>material</b> 58:5 60:21 <b>matter</b> 1:6 8:12,25 10:5,24 24:14 39:25 40:1 41:25	<b>minutes</b> 64:16 <b>Mocny</b> 4:7 54:21 55:3 58:4,24 59:3 68:15 <b>Mocny's</b> 58:5 <b>moment</b> 14:10 19:4 31:23 33:25 35:2 35:12 39:23 54:23 <b>month</b> 35:7 <b>months</b> 20:7 30:23 31:11,25 32:1 33:24 35:6,14,21 <b>morning</b> 9:17 10:25 11:1,4 21:7 44:25 <b>MORRIS</b> 6:10 <b>motion</b> 2:1,5,10,13 2:18 3:1,14 8:14 8:15 9:24 10:7,20 10:21 11:4,6,22 12:6,8,24 19:16 20:25 21:2,25 26:13 27:16,24 28:7,10,20 31:12 35:6,13,16 38:22 <b>memorandum</b> 18:20 <b>mentioned</b> 49:2 <b>Mercedes</b> 41:6,8,9 <b>mere</b> 63:4 <b>merely</b> 51:17 <b>meritorious</b> 17:9 <b>merits</b> 53:4 54:23 <b>Messrs</b> 55:3 <b>met</b> 66:6 <b>Mexico</b> 47:4 <b>Michael</b> 4:3 <b>Michigan</b> 12:7 <b>middle</b> 14:9 18:8 <b>midst</b> 29:9 <b>midyear</b> 36:2 <b>miles</b> 37:20 <b>million</b> 21:2 40:5,22 42:14,18 50:9 51:2 <b>mind</b> 27:15 <b>minds</b> 34:5 67:4 <b>minimal</b> 25:21 <b>minute</b> 16:24
			<b>N</b> <b>N</b> 5:1 8:1 68:1 69:2 <b>NAFTALIS</b> 7:1 <b>name</b> 48:20 49:4 69:14 <b>nature</b> 12:9 13:12

22:5,22 34:15 36:8 38:7 57:8 <b>Neal</b> 11:2 <b>need</b> 20:16,21 27:13 40:23 42:22 46:21 53:7 58:3 63:1 <b>needed</b> 8:18,18 60:15 <b>needs</b> 35:12 <b>negotiated</b> 14:15 <b>negotiation</b> 37:23 <b>negotiations</b> 27:11 <b>NEIL</b> 6:20 <b>never</b> 47:25 51:17 53:17 <b>new</b> 1:3,16,16 5:5,5 6:4,5,5,12,18,18 7:5,5,11,11 13:19 14:2 22:23 24:8 36:16 47:23 <b>Newark</b> 6:12 <b>nexus</b> 51:16,21,21 58:15 <b>nine</b> 42:9 <b>nineteen</b> 19:18 <b>non</b> 29:6 <b>non-public</b> 60:22 <b>note</b> 12:25 19:19 <b>noted</b> 13:13 28:9 50:25 <b>notes</b> 50:5 <b>notice</b> 60:2 62:1,2 <b>noticed</b> 50:13 <b>notified</b> 64:4 <b>notify</b> 67:5 <b>notwithstanding</b> 41:12 47:18 52:12 <b>noun</b> 34:16 <b>November</b> 19:16 45:21 47:10 <b>NOVOD</b> 7:7 <b>nuances</b> 18:19 <b>number</b> 8:14 9:12 9:13 10:5,7,20,24 11:3,20,23 17:1,18 28:24,25 34:6 40:1	40:2 41:10,16,25 42:1 43:3,16 44:5 49:5,6 50:16,17 51:3 56:24 60:1 65:21 <b>numbers</b> 11:18 22:6 41:13 50:25 <b>Nutech</b> 13:6 <b>NYCH</b> 3:19 44:7 <hr/> <b>O</b> <b>O</b> 1:21 8:1 69:2 <b>object</b> 22:1 <b>objected</b> 42:2 <b>objecting</b> 67:2 <b>objection</b> 2:12,13 3:5,9,21 20:10,14 20:15 22:14 24:9 24:13,23 25:16 28:12 29:1,3 31:10 40:2,3,12 41:7,21 41:23 42:1,2,3,6 42:10,17,20,24 43:9,11 44:24 47:1 47:5,9 49:9 50:22 51:1 52:23 53:14 54:24 59:5 66:24 68:12,18,20 <b>objections</b> 23:10,21 28:23 40:9 43:16 43:17 45:8 49:19 50:8,10,11 52:3 54:7,13 <b>obligation</b> 58:21 64:15,23 65:10 <b>obtain</b> 52:8 60:18 <b>obviate</b> 25:20 <b>obviously</b> 13:3,19 14:1,24 15:15 16:15 17:2,6,21,23 19:14 20:9,13 21:1 21:14 22:4 25:10 25:12 27:21 30:7 32:13 37:13 39:16 39:17 49:7,9 <b>occurred</b> 13:24	57:19 61:14 <b>October</b> 21:4 <b>offer</b> 51:16 <b>offered</b> 48:14 <b>Officers</b> 2:8,16 <b>official</b> 2:5,10,13 6:2 52:19 69:5 <b>oh</b> 35:14 39:4 <b>Okay</b> 8:2,11 9:2,6 9:10 10:1,4,18,23 11:17 25:23 26:4,9 28:2 39:11,13,14 39:22 41:19 42:24 43:8 44:18 45:4,18 46:1,3,17,23,24 47:12 48:9,24 49:12,15 50:1,20 51:25 54:10,11 55:1 56:16 57:7,12 59:25 61:10 66:1,7 66:11,12,13 67:9 67:12 <b>omni</b> 28:25 <b>omnibus</b> 3:5,9,21 8:3,7,8 9:1 10:9 20:14 23:8,9 24:23 25:16 28:11,23 29:3 40:1,9 41:21 41:25 42:6,17 43:9 44:20 45:20 46:5 47:1,5,16 49:9,18 50:7,10,22 51:1 54:5 66:19 68:10 68:12 <b>once</b> 28:10 60:20 62:6 <b>onerous</b> 15:8 <b>ones</b> 35:19 49:2 <b>ongoing</b> 14:21 21:5 33:12 <b>open</b> 11:8,13 20:5 32:19 <b>operated</b> 51:7 <b>operation</b> 18:1 <b>opinion</b> 26:14 <b>opposed</b> 15:19	<b>opposition</b> 40:25 43:10 <b>opt</b> 30:25 31:12 35:7 <b>opted</b> 33:1 <b>option</b> 51:14,18 <b>order</b> 2:1,5,10,13 3:14 8:9 14:14 15:6,7 17:17 24:4 35:11 37:12 38:20 39:18 41:7,9,18,22 42:21,21,23 43:10 46:5,20 47:1,2,9 47:14,16,18,19 48:1 49:7,20 52:8 54:2,5,7,8,19 57:13 59:4,24 60:16 63:2 65:13 67:5,5 <b>orders</b> 50:6 53:24 <b>organization</b> 31:8 <b>original</b> 65:23,25 <b>ought</b> 35:12 37:16 <b>outcome</b> 49:10 <b>outlined</b> 18:20 29:8 65:20 <b>outlines</b> 12:23 <b>outset</b> 12:25 13:8 <b>outside</b> 29:22 <b>outstanding</b> 24:9 <b>overall</b> 13:14 <b>overarching</b> 22:12 <b>overseeing</b> 31:6 <b>owed</b> 64:15 <b>owned</b> 51:6 <b>ownership</b> 63:23 <b>owns</b> 57:18 58:11 <hr/> <b>P</b> <b>P</b> 3:6,10,22 4:13 5:1 5:1 8:1 <b>package</b> 32:23 <b>page</b> 23:3 68:2,7 <b>paid</b> 21:21 <b>papers</b> 13:3 22:19 23:3 26:8 28:5 35:22,23 51:20,22
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212-267-6868

516-608-2400

51:23 55:3,14 60:13 66:22 <b>Paragon</b> 16:2 29:17 <b>paragraph</b> 46:25 54:6 <b>part</b> 15:25 20:2 24:18 25:5 31:8 45:13 63:11 <b>parte</b> 2:10 10:21 <b>participated</b> 64:2 <b>particular</b> 8:16 13:5 17:25 18:9,17,17 18:18 25:17 31:17 34:13 40:2 42:3,6 50:2 52:7 54:13,18 55:23 58:10 64:21 <b>particularity</b> 55:16 55:23 56:19 58:6 59:1 <b>particularized</b> 17:10 <b>particularly</b> 42:22 57:15,23 <b>parties</b> 14:15 15:15 17:24 25:8 29:10 32:3 40:10 45:24 46:22 66:9 <b>party</b> 25:3 47:24 53:20,21 <b>passed</b> 65:1 <b>passing</b> 24:2 <b>patent</b> 3:2 12:9,13 12:20,21 13:12,14 13:16,23 14:3 15:7 16:3,4 17:5 18:2,5 18:13,14 21:9 22:21 24:20 29:12 31:3,7,9 32:10,13 32:14,15,25 33:11 33:23 34:7 37:9,10 38:6,9,16 <b>patents</b> 15:21 16:1,4 16:5 17:22,23,25 18:6,21 48:16 <b>pay</b> 51:5 <b>payment</b> 2:23 11:7,9 11:12 27:22	<b>Peachtree</b> 5:14 <b>pending</b> 10:3 23:10 50:11 <b>Penn</b> 6:17 <b>people</b> 25:14 27:4,11 31:20,21 32:4,8 38:5,5 44:23 62:12 <b>Perez</b> 4:17 66:15,24 68:20 <b>period</b> 8:18 12:16 15:13 16:18,18 19:2 26:24 30:5 38:9 44:3,3 48:16 58:14 <b>periods</b> 3:15 30:17 <b>permission</b> 9:15 45:16 54:16 61:16 <b>permit</b> 2:19 65:6,15 <b>permitted</b> 17:5 30:16 <b>permitting</b> 66:3,4 <b>perspective</b> 30:19 <b>pertaining</b> 24:18 <b>petition</b> 11:8 16:18 18:23 <b>phase</b> 15:3 33:19 <b>phone</b> 52:1 57:14 60:9 61:8 65:3 <b>phrase</b> 52:17 <b>phrased</b> 64:24 <b>piece</b> 30:21 <b>pile</b> 34:19,20 <b>place</b> 14:8 36:7 39:6 41:4 44:12,14 <b>placed</b> 61:13 <b>plan</b> 3:16 8:24 9:4 9:19,21,25 21:6 22:22 25:13 27:9 27:10,22 34:22 47:23,25 54:15 56:12 58:23 59:23 <b>planned</b> 27:12 <b>planning</b> 53:25 <b>plant</b> 51:6,13,18 <b>playing</b> 37:2,3 <b>Plaza</b> 6:4,17	<b>pleading</b> 17:18 <b>pleadings</b> 51:19 53:12 <b>please</b> 8:2 35:3 45:4 <b>pled</b> 56:18 <b>point</b> 8:22 9:15 20:18,22,24 22:12 23:15 25:12 26:14 26:20 28:3 31:23 33:10 39:1,2 43:6 48:5 56:17 57:6 66:2 <b>points</b> 12:25 13:7 22:12 26:6 28:8 30:13 <b>policy</b> 60:15 65:10 <b>portfolio</b> 60:16 <b>portion</b> 9:6,8 14:19 15:10 <b>portions</b> 17:23 42:16 <b>position</b> 13:23 22:16 23:13 25:13 62:13 <b>positive</b> 57:25 <b>possession</b> 63:19,20 <b>possible</b> 22:24 <b>post</b> 15:22 <b>posthaste</b> 39:21 <b>post-complaint</b> 15:19 <b>post-discharge</b> 13:25 <b>post-petition</b> 12:12 12:15,19 15:13 16:18 26:17,24 28:14 <b>potentially</b> 22:24 65:13 <b>practical</b> 24:14 <b>pre</b> 12:15 16:17 28:14 <b>preclude</b> 21:25 <b>predominantly</b> 44:10 <b>prefer</b> 38:1,2 <b>prejudice</b> 30:2,23	31:24,25 34:1 35:16,22 36:4 38:23 41:9 66:9 <b>prejudiced</b> 46:14 <b>prejudices</b> 36:3 <b>premature</b> 31:23 38:24 <b>preparation</b> 10:13 <b>prepare</b> 38:10 <b>prepared</b> 15:20 23:15 30:10 <b>present</b> 48:17 54:22 59:16 <b>presentation</b> 13:13 <b>presented</b> 32:16 <b>presently</b> 20:3 23:10 <b>preserved</b> 41:11 46:11,13 <b>press</b> 55:12 <b>presumption</b> 52:8 61:22 63:16 <b>pretrial</b> 15:5,6 <b>pretty</b> 25:13 26:11 36:15 <b>prevails</b> 11:21 <b>previous</b> 47:16 66:19 <b>previously</b> 49:3 52:24 <b>pre-clearance</b> 61:21 <b>pre-petition</b> 13:10 <b>pre-submitted</b> 43:21 <b>pre-trial</b> 44:6 <b>prima</b> 35:1 52:16 <b>primary</b> 17:2 <b>principle</b> 26:16 <b>printed</b> 69:14 <b>prior</b> 13:4 19:7 43:13 <b>priority</b> 12:22 25:11 51:3 <b>prism</b> 55:21 <b>pro</b> 57:24 <b>probably</b> 21:20 30:20
---	--	--	---

<b>procedural</b> 3:5,21 19:25 <b>procedurally</b> 29:22 <b>procedure</b> 19:17,23 19:23 50:13 55:17 <b>procedures</b> 19:13,14 19:24 20:3,10,15 22:2,10,14 23:8 24:1 33:2 36:7 47:9 49:20 50:16 51:10 65:12 <b>proceed</b> 3:2,2 8:9 11:21 12:7 16:10 22:17 25:18 30:10 53:4 58:3 <b>proceeded</b> 24:12 <b>proceeding</b> 20:13 44:7 <b>proceedings</b> 67:15 69:6 <b>process</b> 8:23 12:11 13:11 19:21 20:13 21:12 25:5,22 27:10 28:11,21,22 29:21,25 30:25 31:9,13,16 32:9 34:14,18 35:4,8,9 35:10 49:18 50:9 50:19 <b>processes</b> 32:17 <b>product</b> 16:12 <b>production</b> 13:17,19 <b>program</b> 2:3 8:14 9:13,18,20 44:11 44:14 <b>progress</b> 50:15 <b>prohibited</b> 60:23 <b>prohibition</b> 64:11 <b>promotes</b> 22:17 <b>proof</b> 14:3,4 51:8,12 52:14 53:11 55:18 57:15 60:4 61:5 63:21 64:18 67:1,2 <b>proofs</b> 40:4 42:2,14 50:23,24 51:1 55:4 <b>Properties</b> 33:5	<b>Property</b> 3:18 <b>propose</b> 8:9 <b>proposed</b> 19:12 22:2 22:9 41:22 47:23 <b>proposing</b> 34:11 37:22,22 <b>proposition</b> 17:7 21:8 <b>Prosecute</b> 2:6,14 <b>prosecuted</b> 9:24 <b>prosecuting</b> 29:24 <b>protect</b> 59:10 <b>provide</b> 48:2 <b>provided</b> 41:18 49:17 63:18,18 <b>provides</b> 52:14 <b>provision</b> 47:18 62:25 <b>provisions</b> 24:6 <b>public</b> 61:22 <b>pulling</b> 63:7 <b>purchase</b> 56:22 57:17 58:8 <b>purpose</b> 11:23 21:18 21:19 <b>purposes</b> 20:17 42:15 43:19 52:5 53:2 58:3 <b>pursuant</b> 2:22 3:5,9 3:21 20:15 42:20 46:22 47:8 49:18 49:20 50:13 52:24 <b>put</b> 8:25 11:15 39:20 40:23,23 43:20 67:4 <b>p.m</b> 1:19 45:3,3 67:15	<b>R</b> 1:21 3:6,10,22 4:7 5:1 8:1 69:2 <b>radios</b> 44:10 <b>raise</b> 24:11 36:21 <b>raising</b> 19:11 21:4 <b>Randall</b> 7:17 45:11 <b>rapid</b> 27:13 <b>RCA</b> 3:19 <b>RCS</b> 44:8 <b>read</b> 13:5 17:12 26:7 29:23 35:23 46:21 48:6,7 63:22 <b>reading</b> 12:19 29:3 61:10 66:25 <b>reads</b> 17:22 <b>ready</b> 8:22 <b>real</b> 12:19 30:19 <b>realistic</b> 20:4 <b>really</b> 10:7 12:9 13:9 13:11 14:14 17:4 17:10 18:13 22:4 22:12 26:1,13 27:9 30:23 32:16 35:19 37:24 58:11 61:4 64:20 67:1 <b>reason</b> 8:15 27:23 59:17 <b>reasonable</b> 27:19 <b>reasonably</b> 9:18 <b>reasons</b> 34:21 43:11 <b>rebate</b> 44:11,14 <b>recalls</b> 16:2 29:16 <b>Receivables</b> 24:21 <b>receive</b> 18:24 42:13 61:17 <b>received</b> 11:6 42:9 42:11 <b>receives</b> 18:25 <b>recess</b> 44:21 45:1,3 <b>reclassified</b> 66:20 <b>recognition</b> 26:22 <b>recognizable</b> 64:19 <b>recognize</b> 25:10 <b>recognized</b> 12:16 13:15 28:16 29:10 <b>recognizes</b> 13:18	<b>recognizing</b> 12:9 13:21 <b>record</b> 12:2 29:4,25 33:10 41:4,21 42:5 42:12 43:9,14,20 47:9 48:6,7,11 <b>recording</b> 69:6,8 <b>records</b> 3:12 23:21 42:9 43:1,2 <b>Recoupment</b> 2:20 <b>Recover</b> 3:18 <b>reduction</b> 44:15 <b>Reece</b> 45:11 <b>REESE</b> 7:17 <b>reference</b> 17:7 24:4 24:6,9 34:9 <b>references</b> 55:11 <b>refers</b> 58:24 <b>reflect</b> 65:13 <b>reflected</b> 3:12 42:5 <b>reflects</b> 49:7 <b>regard</b> 57:22 59:3 59:19,24 <b>regarding</b> 4:1,3,5,7 4:9,11,13,15,17 41:11 55:9 66:14 <b>regardless</b> 63:15 <b>regime</b> 22:4,4 <b>regulation</b> 63:12 <b>relate</b> 12:15 54:13 <b>related</b> 51:5 <b>relatively</b> 19:22,22 21:14 27:13 <b>release</b> 64:23 <b>releases</b> 55:12 <b>relevant</b> 65:23,24 <b>reliance</b> 58:9 <b>relied</b> 56:21 58:2 <b>relief</b> 2:18 3:1 11:5 11:22 13:4,14 19:7 19:12,15 20:6,8,18 22:15 25:14 28:17 29:5 37:17 39:5 42:16 49:3 <b>rely</b> 51:23
--	---	--	---

<b>remarks</b> 39:2	50:22,23 54:8,24	46:13	<b>second</b> 3:21 8:17
<b>reorganization</b> 3:16	58:21 59:6,23	<b>rise</b> 59:1	23:19 24:23 25:16
47:23	64:16	<b>risk</b> 20:1,9	26:13 29:2 42:2,4
<b>repeat</b> 52:4	<b>respectfully</b> 63:3	<b>ROBERT</b> 1:22	45:19 46:5 47:16
<b>reply</b> 40:11,16 44:14	<b>respects</b> 37:8 55:5	<b>Rockefeller</b> 55:19	49:9 50:11
<b>report</b> 50:14	<b>responding</b> 60:13	<b>Ronald</b> 4:5	<b>section</b> 2:23 3:6,10
<b>reports</b> 31:4	<b>response</b> 28:9 40:15	<b>roughly</b> 50:9	3:14,22 24:6 31:4
<b>representation</b>	53:14 56:9 57:15	<b>rule</b> 27:6 51:9 52:13	<b>sections</b> 2:1 31:21
48:17	60:2,3,5 61:2,17	52:13,22,24,25	<b>secured</b> 52:20
<b>reputably</b> 25:18	65:20	55:17,21 57:20	<b>securities</b> 57:18
<b>request</b> 12:24 13:1	<b>responses</b> 40:8 41:5	<b>rules</b> 52:15,18,18	61:14 62:18 63:23
18:12 44:12 51:23	42:9,11,13,19,23	<b>ruling</b> 17:15 66:10	63:24 64:5,6,11
61:18,25 62:3,5	45:19,22 67:1	<b>RULINGS</b> 68:6	<b>security</b> 2:11 57:17
<b>requested</b> 48:7	<b>responsive</b> 18:20	<b>running</b> 46:15	58:9
61:15,16	28:5 29:9	<b>run-of</b> 22:10	<b>SEC's</b> 60:14
<b>requests</b> 13:1 62:8	<b>rest</b> 45:14	<b>run-of-the-mill</b> 13:2	<b>see</b> 21:12 22:19 24:5
65:21,22	<b>restriction</b> 61:13	16:21,21 18:11	27:15 53:10 61:2
<b>require</b> 11:14 22:8	62:11,14	26:1	65:7 66:19
36:23	<b>result</b> 9:23 13:9	<hr/>	<b>seek</b> 25:3 42:16 65:1
<b>required</b> 47:17	36:14	<b>S</b>	<b>seeking</b> 14:8 20:18
55:16 61:21 64:22	<b>retail</b> 44:8	<b>S</b> 5:1 8:1	23:9 24:8 26:13
<b>requires</b> 52:20	<b>retained</b> 30:9,9	<b>SA</b> 47:4	29:5 39:5 57:9
<b>requiring</b> 52:18	<b>retirement</b> 54:15	<b>Saginaw</b> 51:15	<b>seeks</b> 11:7
<b>reschedule</b> 42:21	59:10,23	<b>sale</b> 48:14 56:23	<b>seen</b> 45:14
<b>reserve</b> 20:17 21:18	<b>review</b> 8:23	57:17 58:9	<b>Segal</b> 6:16,16 11:3,3
27:18	<b>reviewed</b> 53:11	<b>satellite</b> 44:10	<b>sell</b> 57:10 60:11,19
<b>reserved</b> 39:4	57:14 58:4	<b>save</b> 19:17	61:16 64:11
<b>reserves</b> 27:14	<b>reviewing</b> 8:23 52:2	<b>saw</b> 20:14	<b>seller</b> 44:8
<b>resolution</b> 13:11	52:25	<b>saying</b> 32:17 33:17	<b>sense</b> 18:4 27:16
23:15 25:7 28:22	<b>revolves</b> 13:11	33:25,25 34:10	56:13
38:3 46:25 48:4	<b>RICHARD</b> 6:7,8	35:2 59:20 63:15	<b>separate</b> 41:9 42:11
<b>resolutions</b> 46:16	<b>right</b> 9:11,22 10:9	65:23	46:18 54:7 62:8
<b>resolve</b> 45:21 48:7	13:15 14:9 15:4,10	<b>says</b> 35:11 54:6 56:9	66:3
<b>resolved</b> 28:23 41:2	16:8 20:23 21:21	64:13	<b>separately</b> 67:5
45:21,24 50:3,18	26:14 27:22 31:22	<b>schedule</b> 10:11	<b>separation</b> 62:2
<b>resolves</b> 25:17 40:22	32:14,20,22 33:22	50:12	<b>Services</b> 47:3
49:1,9	35:11 38:19 39:11	<b>scheduled</b> 44:24	<b>servitude</b> 51:4
<b>resolving</b> 36:6	40:20 41:19,20	49:19	<b>set</b> 11:7 15:2,6 27:18
<b>resources</b> 30:24	43:8 46:10 48:3	<b>scope</b> 65:6	40:19 41:21 43:9
<b>respect</b> 9:12 12:13	52:1 56:16 57:4,12	<b>scrubbed</b> 51:19	44:1 47:8 52:9
17:25 20:18 21:13	57:14 58:4,17	<b>se</b> 57:24	53:7,15 55:2,14
23:10,21 25:15,22	59:11,17 61:7,15	<b>Seal</b> 2:11	57:19 59:20 64:18
28:14 33:19,20	62:4,11,21 63:21	<b>seam</b> 18:8	65:8,12
40:11 41:8 42:19	66:6,24	<b>searched</b> 61:2	<b>setoff</b> 2:19 11:6
45:23 46:20,21	<b>rights</b> 2:20 14:5,6	<b>seated</b> 8:2 45:4	<b>sets</b> 56:22
47:2,10,16 48:4	39:4 41:10,11	<b>SEC</b> 55:11	<b>settle</b> 37:14,14 39:17

<b>settlement</b> 33:16 37:23,25 38:12 <b>settling</b> 39:10 <b>seven</b> 50:23,24 <b>severance</b> 51:5 <b>shares</b> 60:11,19 <b>Sheehan</b> 43:23 68:3 <b>Sheehan's</b> 43:21 <b>Shortly</b> 64:10 <b>show</b> 15:20 21:2 59:1 <b>shown</b> 31:25 <b>shows</b> 49:17 <b>SHRIVER</b> 6:1 <b>side</b> 31:1,3 33:23 <b>Sieloff</b> 4:3 54:20 55:3,24 57:13 58:6 58:24 59:3 68:14 <b>Sieloff's</b> 57:14 <b>Sierra</b> 41:6,12 <b>Signature</b> 69:11 <b>significant</b> 20:8 28:19 <b>significantly</b> 19:15 <b>silent</b> 63:8 <b>silly</b> 32:12 <b>SILVINSKI</b> 6:8 <b>Similar</b> 46:4 <b>similarly</b> 10:20 <b>simply</b> 9:15 10:2 30:22,25 43:14 63:16 <b>Singer</b> 17:9 <b>sit</b> 34:22 <b>situation</b> 24:10 26:2 29:17 54:3 <b>six</b> 28:23 31:25 51:4 <b>sixteen</b> 20:7 <b>sixth</b> 20:14 35:6 <b>sixty</b> 36:19 37:11,14 38:11 <b>size</b> 65:5 <b>Skadden</b> 5:2 8:5 45:12 <b>Slate</b> 5:2 8:6 <b>slated</b> 49:19	<b>small</b> 34:20 <b>smells</b> 34:23 <b>sold</b> 44:9 48:14 55:8 <b>Solicit</b> 3:15 <b>solution</b> 63:12 <b>somebody</b> 38:18 <b>Sonax</b> 16:23 17:1 25:7 26:7,11 35:23 <b>soon</b> 10:14 61:24 <b>sorry</b> 45:5 62:5,7 <b>sort</b> 14:13 18:6 20:24,25 22:12 29:17 34:5 58:22 <b>sought</b> 13:14 19:15 40:4 55:6 60:18 <b>sound</b> 69:6 <b>Southern</b> 1:3 22:23 <b>so-called</b> 49:5 <b>speak</b> 56:2 <b>specialized</b> 13:12 16:23 17:3 18:3 <b>specific</b> 15:12 30:10 30:12 63:25 <b>Specifically</b> 47:1 <b>specify</b> 64:20 <b>spent</b> 22:20 <b>spoke</b> 11:14 <b>Square</b> 5:4 <b>staff</b> 64:11,12 <b>stage</b> 36:5 <b>stakeholders</b> 8:20 8:24 <b>standard</b> 33:14 51:9 52:2,4 66:3,5 <b>standing</b> 23:5 <b>start</b> 14:13 22:22 35:15 <b>state</b> 43:14 55:15,22 <b>stated</b> 42:25 43:11 44:21 53:17 60:15 <b>statement</b> 9:21 43:17 48:6 56:20 59:9,13 61:18 63:4 <b>statements</b> 41:4 55:12,14,15 <b>states</b> 1:2 53:9	<b>stating</b> 47:17 <b>status</b> 55:6 <b>statute</b> 18:2 <b>stay</b> 2:19 3:2 11:5,22 12:6 14:11,20 15:16 16:21 18:11 19:7,12 20:6,8 21:2,9 22:15,16 23:6 24:11,15 25:2 25:14 26:21 28:7 28:17 29:18 30:15 30:16 35:13 36:24 37:13,14,16,18 38:11 39:6 49:3 50:3 <b>stays</b> 13:4 <b>steering</b> 16:14 <b>stipulate</b> 48:12 <b>stipulation</b> 11:16 45:23 46:18 48:11 <b>stock</b> 54:15 55:4,6,7 55:8 57:1 58:2,11 58:14,22 61:17 66:21 67:6 <b>stockholders</b> 54:14 54:16 <b>stone</b> 18:23 <b>straight</b> 45:16 <b>Street</b> 5:14 6:11 <b>struck</b> 28:20 <b>structure</b> 27:12 29:16 37:12 <b>stuff</b> 26:7 35:18,23 <b>subgroup</b> 54:17 <b>subject</b> 19:25,25 24:1 26:25 30:4 44:16 46:5 47:4 50:10 <b>submit</b> 11:16 25:25 38:20 42:23 50:6 53:24 59:4,23 63:3 <b>submitted</b> 41:8 58:5 <b>submitting</b> 54:1 <b>subpoena</b> 60:14 <b>subsequent</b> 15:7 64:2	<b>subsequently</b> 60:17 <b>subsidiary</b> 25:1 <b>substantial</b> 22:8 <b>substantially</b> 66:4 <b>substantive</b> 3:9 23:20 45:7 <b>sufficiency</b> 4:1,3,5,7 4:9,11,13,15,17 45:8 49:16 50:21 54:13,24 59:5 66:14 <b>sufficient</b> 52:6 57:20 58:6,25 63:4 64:8 <b>sufficiently</b> 11:9 55:22 58:15 <b>suggests</b> 53:22 64:17 <b>suitable</b> 38:9 <b>summary</b> 49:17 50:5 <b>summer</b> 13:6 19:8 35:17 <b>super</b> 31:14 <b>superseded</b> 40:7 <b>supplement</b> 8:16 <b>supplemental</b> 2:11 65:20 <b>support</b> 2:12 17:6 52:6 61:5 65:4 <b>supported</b> 41:23 <b>sure</b> 26:21 39:5,17 <b>survive</b> 53:23 59:19 <b>surviving</b> 47:21 49:2 <b>suspect</b> 10:10 <b>sustainable</b> 23:5 <b>switch</b> 46:8 <b>Systems</b> 7:2 23:22 25:1,20 41:14,15 41:17 47:3 48:23 <b>S.D.N.Y</b> 52:10
		<b>T</b>	
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54:19 56:17 57:13 62:13 <b>taken</b> 11:19 29:22 <b>takes</b> 38:10 <b>talk</b> 12:17 14:10 16:24,24 19:3 <b>talked</b> 23:11 <b>talking</b> 21:13 37:24 62:16 <b>tandem</b> 12:5 14:7 <b>targets</b> 9:3 <b>team</b> 32:6,7 45:13 45:14 <b>Technologies</b> 40:17 <b>technology</b> 18:17 33:5 <b>telephonically</b> 7:15 <b>term</b> 48:22 52:11 <b>terminated</b> 64:9 <b>terms</b> 16:3,5 17:3 19:4 23:7 40:10 65:21 <b>Terry</b> 4:7 <b>Thank</b> 11:17,24 30:11 38:25 39:12 41:24 43:12 44:4 44:19 45:2 48:25 49:13,14 59:25 66:11 67:13,14 <b>Thanks</b> 49:25 <b>themes</b> 46:15 <b>thereto</b> 53:12 <b>thereunder</b> 12:18 <b>the-mill</b> 22:11 <b>thing</b> 21:14 31:17 37:11,15 <b>things</b> 18:7 34:17 40:22 66:8 <b>think</b> 10:15 12:5,5 12:18,25 13:7,8,15 14:7 15:14 16:9,20 17:12,24 18:10,25 20:1,4,9 21:11,16 22:3,11,17,19 23:2 23:14,24 24:2,23 25:14,16,24 27:22	29:3,21,25 30:23 31:23 33:13 34:5 35:5 36:3,8,15,25 37:9 38:4,7,11,13 38:15,16 40:22,23 41:3 42:22 44:21 49:1,4 50:15 55:13 56:8 57:23 58:3 64:17 67:3 <b>third</b> 7:10 18:13 43:15 47:1,5 49:10 50:22 51:1 53:20 53:21 <b>third-party</b> 56:14 <b>thirteen</b> 40:8 42:6 <b>thirty</b> 20:6 51:2 <b>thirty-two</b> 51:13 <b>thought</b> 19:20,21 20:10 24:5 60:21 <b>thousands</b> 32:13 <b>three</b> 35:6,20 42:11 45:19,21 46:16 62:3,6,7,8 <b>three-week</b> 62:1 <b>thumb</b> 63:8 <b>time</b> 8:21 10:10,11 11:13 17:13 19:2 20:20 21:10,17,23 24:2 27:5 28:1,6 28:18 30:5,18 31:16 37:10 45:20 47:20 48:16 54:25 55:7,7 58:12 62:2 62:3 64:6 <b>timely</b> 42:10 50:19 <b>Times</b> 5:4 <b>timing</b> 19:4,5 20:2 27:9 28:1,4 65:22 <b>today</b> 12:24 13:14 16:17 20:14 21:9 22:7 23:11,12,25 24:1 33:3 42:16 50:7 <b>today's</b> 47:7 <b>Togut</b> 6:16 11:2 <b>told</b> 63:16	<b>tomorrow</b> 27:21 <b>tort</b> 12:19 26:17 30:3 <b>tossing</b> 22:7 <b>totally</b> 40:21 <b>track</b> 10:21 19:22 31:15 <b>trade</b> 16:2 22:11 31:18 32:14 <b>trading</b> 60:23 63:14 <b>transaction</b> 64:6 <b>Transcribed</b> 4:24 <b>transcriber</b> 69:4,11 <b>transcript</b> 69:5 <b>transcription</b> 69:8 <b>transcripts</b> 13:5 <b>transfer</b> 22:25 51:14 51:18 <b>treatment</b> 26:25 <b>trial</b> 14:23,24 15:11 15:12 16:10,11 33:21 <b>tribunal</b> 16:23 17:3 18:3 <b>tried</b> 61:2 <b>true</b> 23:19 51:11 53:7 64:20 65:9 <b>Trustee</b> 3:23 <b>try</b> 16:19 27:24 50:18 <b>trying</b> 31:17 <b>turn</b> 49:15 <b>turning</b> 12:23 26:12 39:14 66:13 <b>turns</b> 46:8 <b>turon</b> 35:1 <b>twenty</b> 18:19 21:2 <b>twice</b> 35:7 <b>two</b> 8:25 12:4 15:3 23:9 25:18 35:20 42:3 43:16 49:2 <b>twofold</b> 17:4 56:18 <b>two-phase</b> 15:11 <b>type</b> 26:1 44:11 62:25 65:2 <b>typed</b> 69:14	<b>typical</b> 29:16 <b>typically</b> 14:23 18:18 62:25 <hr/> <b>U</b> <b>ultimately</b> 12:14 20:12 27:20 46:9 53:4 <b>uncontested</b> 40:20 42:16 <b>underlying</b> 63:1 <b>understand</b> 11:21 32:25 34:6 39:2,8 41:4 60:13 65:14 <b>understanding</b> 10:15 17:24 22:21 61:20 63:13 <b>unfold</b> 21:12 <b>unidentified</b> 57:18 <b>unions</b> 28:19 40:13 40:14 <b>unique</b> 17:3,24 18:4 <b>UNITED</b> 1:2 <b>unlevel</b> 37:4 <b>unliquid</b> 13:10 <b>unliquidated</b> 16:22 28:13 <b>unopposed</b> 41:22 43:25 <b>unresponsive</b> 64:12 <b>Unrou</b> 45:12 <b>unsecured</b> 2:6,14 19:17 21:11,13 25:11 34:15 36:6 51:3 <b>untimely</b> 42:11 <b>unusual</b> 36:8 <b>unwillingness</b> 29:7 <b>U.S</b> 1:14,23 53:10 <b>U.S.C</b> 2:1,22 3:6,10 3:14,22 <hr/> <b>V</b> <b>v</b> 12:19 53:10 <b>validate</b> 26:16 <b>validity</b> 16:1,3 52:8 52:16
---	--	--	--

<b>value</b> 37:6 55:6,8 57:10 60:5 63:24 64:6 <b>variety</b> 33:14 35:24 <b>various</b> 34:21 45:8 51:19 53:12 <b>venue</b> 22:25 <b>vested</b> 18:2 <b>Victoria</b> 66:15 <b>Victory</b> 4:17 <b>view</b> 24:3 27:2,4 57:22 <b>viewed</b> 55:21 <b>vigorous</b> 29:11 <b>vigorously</b> 29:24 <b>vineyards</b> 22:20 <b>violated</b> 65:9 <b>violation</b> 12:10 13:14,16,24 15:21 <b>violations</b> 12:14 13:25 <b>virtually</b> 33:13 <b>virtue</b> 14:5,12 <b>visibility</b> 35:17 <b>vociferously</b> 22:1 <b>vote</b> 21:21 <b>voting</b> 21:19 47:23	<b>Washington's</b> 51:24 53:11 <b>wasn't</b> 61:10 <b>waste</b> 27:5 <b>watching</b> 63:8 <b>WATKINS</b> 7:9 <b>way</b> 8:15 9:14 10:16 13:22 14:16 16:13 18:9,19 28:16 29:11 32:18,20 <b>week</b> 8:24 <b>weeks</b> 62:3,6,8 <b>weigh</b> 35:25 <b>went</b> 17:16 <b>weren't</b> 23:13 39:5 <b>West</b> 5:14 <b>we'll</b> 10:10,19,21 11:16,23 23:15 27:2,3 34:24 39:20 49:7 <b>we're</b> 8:22,23 15:4 21:13,21 23:14 25:16 28:15 31:16 34:14,18,19,20 35:1,6,7 37:15 40:20 45:7 50:6,18 51:8 <b>we've</b> 8:22 11:15 13:5 22:15 23:2 42:2 44:16 46:4,4 46:6,11 50:16,17 51:18 61:1 <b>wheels</b> 16:14 <b>whipsawed</b> 27:25 <b>Wilfred</b> 4:15 66:15 <b>William</b> 4:9,13 <b>withdraw</b> 24:3,5 <b>withdrawal</b> 17:7 24:6,9 <b>withdrawn</b> 43:19 <b>withdrew</b> 34:8 <b>withstand</b> 57:20 <b>WL</b> 52:10 <b>WM</b> 5:7 <b>WOLF</b> 6:7 <b>work</b> 18:7 35:19	44:1,2 60:12 <b>worked</b> 10:17 <b>working</b> 31:20 35:19 45:11 50:16 50:18 63:11 <b>WorldCom</b> 52:10 <b>worry</b> 30:2 <b>worth</b> 42:15 <b>wouldn't</b> 64:21 <b>writing</b> 52:21,22 <b>written</b> 43:21 <b>wrong</b> 14:2 <hr/> <b>X</b> <b>x</b> 1:5,12 18:24,24 34:23 68:1 <hr/> <b>Y</b> <b>yeah</b> 35:14 39:4 56:6 57:5 <b>years</b> 18:19,22 22:20 29:6 30:15,21 51:4 51:13 <b>York</b> 1:3,16,16 5:5,5 6:4,5,5,18,18 7:5,5 7:11,11 22:23 24:8 <hr/> <b>Z</b> <b>Z</b> 7:7 <b>zealously</b> 50:18 <hr/> <b>0</b> <b>05-44481</b> 1:4 <b>07102</b> 6:12 <hr/> <b>1</b> <b>1</b> 14:13 48:11,17 <b>1.7</b> 31:19 34:2,17 35:5,20 <b>1:45</b> 1:19 <b>10</b> 66:14 <b>10.8</b> 42:14 <b>10004</b> 6:5 <b>10022</b> 7:11 <b>10036</b> 5:5 7:5 <b>10100</b> 49:5 <b>10111</b> 49:6	<b>10119</b> 6:18 <b>105</b> 2:1 <b>11</b> 2:1,22 3:5,9,14,21 21:15 30:19 44:5 <b>1113</b> 10:16 28:19 <b>1114</b> 10:16 28:20 <b>1121(d)</b> 3:14 <b>1124</b> 21:20 <b>11243</b> 21:20 <b>1129</b> 27:22 <b>1177</b> 7:4 <b>12</b> 1:18 46:25 47:5 <b>1201</b> 5:14 <b>13th</b> 40:16 <b>14</b> 40:17 <b>140</b> 40:5 <b>15</b> 68:18,20 69:10 <b>15th</b> 9:1,12 10:9,19 10:22 <b>157</b> 24:7 <b>159</b> 42:7 <b>15975</b> 41:13 <b>15981</b> 41:13 <b>15983</b> 41:15 <b>15984</b> 41:16 <b>15986</b> 41:13 <b>16</b> 42:18 <b>160</b> 42:17 <b>167</b> 52:12 <b>173-174</b> 52:12 <b>18</b> 68:10 <b>1957</b> 53:10 <b>1985</b> 23:4 <b>1992</b> 52:12 <b>1999</b> 14:13 48:17 51:6,14 <hr/> <b>2</b> <b>2</b> 9:12 48:12 51:6 <b>2d</b> 52:12 <b>2:35</b> 45:3 <b>20</b> 68:14,15 <b>2004</b> 11:8 <b>2005</b> 52:10,11 64:9 <b>2006</b> 8:17 13:18 47:10
--	--	--	---

<b>2007</b> 1:18 8:20,23 30:23 40:17 47:5 69:10 <b>2008</b> 30:16 33:21 <b>21</b> 68:3,8,16 <b>213</b> 8:14 9:14 <b>279</b> 40:21 <b>29</b> 52:10  <b>3</b> <b>3</b> 10:5 48:13 54:12 54:19 <b>3d</b> 52:12 <b>3:15</b> 45:1 <b>3:37</b> 45:3 <b>30</b> 47:10 <b>30th</b> 45:21 <b>3001(a)</b> 52:18 <b>3001(c)</b> 52:20 <b>3001(f)</b> 52:13,14 <b>3007</b> 3:6,10,22 <b>30309</b> 5:15 <b>355</b> 53:10 <b>363</b> 2:1 <b>365</b> 10:16 <b>38</b> 68:8 <b>3832065</b> 52:10  <b>4</b> <b>4</b> 10:20 48:14 54:20 <b>4:07</b> 67:15 <b>40,000</b> 60:4 <b>401</b> 56:10 <b>401K</b> 56:5,10,12 58:23 59:23 60:17 <b>41</b> 53:10 68:10 <b>43</b> 68:3,12 <b>45-46</b> 53:10 <b>4718</b> 10:7 <b>4778</b> 41:10  <b>5</b> <b>5</b> 10:24 11:3 48:16 54:20 68:17 <b>502(b)</b> 3:6,10,22 <b>503</b> 2:23 <b>518</b> 50:9	<b>5774</b> 11:20 <b>5777</b> 11:22 <b>58</b> 68:14,15,16 <b>59</b> 40:21  <b>6</b> <b>6</b> 11:18 54:21 68:12 <b>6099</b> 40:2 <b>6100</b> 42:1 <b>6285</b> 43:16 <b>6440</b> 43:18 <b>6442</b> 43:18 <b>65</b> 68:17 <b>66</b> 68:18,20  <b>7</b> <b>7</b> 11:18,23 60:1 <b>7th</b> 40:15 <b>7012</b> 52:25 57:21 <b>744</b> 6:11 <b>772</b> 40:4 <b>776</b> 23:3  <b>8</b> <b>8</b> 40:1 54:12,21 <b>8,588</b> 60:6 <b>8.5</b> 50:8 <b>802</b> 23:3 <b>807</b> 23:3 <b>885</b> 7:10  <b>9</b> <b>9</b> 41:25 66:13 <b>9th</b> 23:3 <b>9(b)</b> 55:17,21 <b>9:30</b> 44:25 <b>9014</b> 52:22 <b>9014(c)</b> 52:24 <b>954</b> 52:11		
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